

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

MARTIN O. LONG,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. 2:06CV816-MHT
)	
STATE FARM FIRE AND CASUALTY)	
COMPANY,)	
)	
Defendant.)	

**SECOND EVIDENTIARY SUBMISSION IN SUPPORT OF
PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S
MOTIONS FOR SUMMARY JUDGMENT**

Comes now the Plaintiff in the above-styled cause and submits the following evidentiary documents in support of his Brief in Opposition to Defendant's Motions for Summary Judgment:

1. Executed Affidavit of Robert Sharp
2. Miniscript of deposition of Donal O'Shaughnessy

Respectfully submitted,

s/F. Tucker Burge
F. TUCKER BURGE
BURGE & BURGE
2001 Park Place #850
Birmingham, AL 35203
(205)251-9000
(205)323-0512 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of May, 2007, electronically filed the above and foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to James B. Newman, Esq., Helmsing, Leach, Herlong, Newman & Rouse, Post Office Box 2767, Mobile, AL 36652.

s/ F. TUCKER BURGE

OF COUNSEL

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Plaintiff,)	
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vs.)	CASE NO. 2:06CV816-MHT
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STATE FARM FIRE AND CASUALTY)	
COMPANY,)	
)	
Defendant.)	

STATE OF GEORGIA

_____ COUNTY

AFFIDAVIT OF ROBERT J. SHARP

Before me, the undersigned for said County and in said State, personally appeared Robert J. Sharp, who is known to me and who, after first being duly sworn, deposes and says:

My name is Robert J. Sharp. I am over the age of 21. I have personal knowledge of the facts contained in this affidavit. I am aware that this affidavit is being submitted in opposition to State Farm's Motion for Summary Judgment in the above-styled case.

Qualifications and Experience:

My curriculum vitae is attached as Exhibit 1. The experience and qualifications set forth on the curriculum vitae are accurately recited. Among other things, I have had oversight responsibility for over 260 insurance industry employees, 20,000 claim files and 3,000 litigated files during my tenure in the insurance industry. I have familiarity with the customs and practices in the insurance industry for handling claims and denial of claims. I have taught on the subject of casualty claim handling and have managed a special investigative unit for an insurance company. My work experience includes handling first party insurance claims relating to claims for stolen automobiles. During my career in the insurance industry, I have personally handled and supervised thousands of property and casualty claims. I have been personally involved in estimating claim damages, claim coverages, denials and procedures. I have served as an

instructor in claims training and insurance procedures classes. I am familiar with insurance regulations and practices. I am familiar with proper insurance industry standards and procedures for handling property and casualty claims. I am familiar with the custom and practices in the insurance industry for investigating and handling of property and casualty claims, including litigated issues. I have chaired instructional seminars for the Property Loss Research Bureau and the National Association of Mutual Insurance Companies. I have served as a law committee member for the National Association of Independent Insurers. I have served as an instructor and presented seminars at the National Association of Arson Investigators and International Association of Arson Investigators as well as for state and local claims organizations.

I have been designated in approximately 30 cases in the last two years as an expert to testify on the issues of insurance industry claims practices and handling. In addition, I have qualified to testify at trial as an expert witness and testified on insurance industry claims practices and handling approximately 25 times during my career in the insurance industry. A list of the case in which I have given trial or deposition testimony in the last three years is attached as Exhibit 2. In addition, I testified concerning insurance claims practices and claims decisions on numerous occasions on behalf of the insurance companies that I worked for during my career in handling insurance claims while employed with insurance companies.

Materials Reviewed:

I have been retained by the law firm of Burge & Burge to evaluate State Farm's handling of two claims that Martin Long filed concerning the loss of his 2000 Chevrolet Corvette on February 19, 2000. I have reviewed the following:

\$	Complaint
\$	Answer
\$	Plaintiff's interrogatory answers
\$	Defendant's interrogatory answers
\$	Claim file for claim number 01-6596-564 (SF1 00001 through SF1 00831)
\$	Claim file for claim number 01-Q177-057 (SF2 00001 through SF2 00119)
\$	State Farm Auto Claim manual and claim operation guides (SF1 0001 - P through 0107 - P)
\$	Documents concerning policy 01-CW-7517-0 (SF-H 001 through SF-H 058)
\$	Documents concerning policy 886750-B04-01 (SF-A 001 through SF-A 027)
\$	Code of Alabama, 1975, § 27-14-28
\$	Deposition of Martin Long
\$	Deposition of Todd Smith
\$	Deposition of Tony Nix
\$	Scene photographs of hotel parking lot
\$	Expert disclosures of Donal O'Shaughnessy

Factual Background:

From my review of the materials listed above, I learned the following facts that are relevant to my opinions in this case.

1. On February 4, 2005 Martin Long purchased a 2000 Chevrolet Corvette from City Auto Sales. Long paid for the car in full. Specifically, he paid the \$25,000.00 purchase price at the time of the sale and there were no bank liens on the car or other encumbrances whatsoever.

2. Martin Long purchased an automobile policy covering this Corvette from State Farm Fire & Casualty Company. Long paid State Farm a \$637.32 premium payment for full coverage on the Corvette from February 4 to August 4, 2005. The policy that State Farm issued on the Corvette was policy number 88 6750-B04-01.

3. Martin Long improved the 2000 Chevrolet Corvette from the time that he bought it up until the time that he last saw the car before it was stolen. Long replaced the tires, rims, a tie-rod and added other accessories to the car. He produced receipts to State Farm for the work performed by Big 10 Tires. These receipts totaled \$1,572.14 and reflect that the last work done by Big 10 Tires on this car was performed on February 18, 2005.

4. On February 18, 2005, Long drove his Corvette from Montgomery to Lithonia, Georgia, to spend the weekend at the Country Inn Suites with Valerie Ware Temple. They parked the Corvette near the hotel entrance, in plain view of the hotel security camera. Long and Ms. Temple were together in the hotel room when his Corvette was taken from the parking lot. Long learned of the theft the following morning. He notified the hotel management, the police and State Farm that same morning.

5. Martin Long made a claim for the fair market value of his stolen Corvette under State Farm automobile policy 0886-750-01 and the claim number for that claim was 01-6596-564. He made a separate claim for the personal property stolen from the car under a manufactured home policy issued by State Farm bearing policy number 01-CW-7517-0 and the claim number for that claim was 01-Q177-057. Long paid separate premiums for these policies and State Farm accepted these premiums. I understand that this lawsuit concerns only State Farm's denial of Claim No. 01-6596-564.

6. Long submitted an Affidavit of Vehicle Theft in support of his claim for the full market value of the Corvette. He wrote that the amount of his claim was \$25,000.00, the amount that he had paid for the car. State Farm concluded that the actual cash value of the Corvette was \$25,789.50. Thus, if State Farm had paid Mr. Long's claim, it would have been obligated to pay \$25,289.50 (the fair market value less a \$500.00 deductible).

7. The claim file contains no direct proof suggesting that Long was involved in the theft of his 2000 Corvette. Long denies any involvement in the loss of his car. No witness claims to have seen him take his car from the parking lot after he and Ms. Temple went up to their room for the night. The hotel security camera system was inoperable and did not record who took the car or how. Mr. Long discovered that the hotel security video camera system was out of order when he asked the hotel staff to view it. Because Mr. Long was with Ms. Temple in the hotel room from the time they parked the car on the night of February 18 until they discovered the car was gone the next morning, Long lacked the opportunity to move the car.

8. The claim file contains no suggestion of who took the car from the parking lot of the hotel. No arrests were ever made. Neither the police nor State Farm performed any forensic examination to determine who specifically took the car from the hotel parking lot or how.

9. The claims file contains numerous and conflicting references to the keys for the 2000 Chevrolet Corvette. The dealer who sold Martin Long the car told State Farm that he believed only one set of keys came with the car. Long believed he got two sets of keys and told State Farm that the second set of keys may have been inside the car when it was stolen. Valarie Ware Temple told State Farm that Long mentioned to her that a second set of keys may have been inside the car when it was stolen. The hotel manager overheard Long say there were keys inside the car when it was stolen. The car was ransacked after it was stolen and no keys were in it when it was recovered. Mr. Long has not been able to find any other set of keys.

10. The car was not in driveable condition when it was recovered. The brake system on the 2000 Chevrolet Corvette was not functional when the car was recovered. The brake fluid had been drained. The brake master cylinder reservoir was empty. Brake system components were missing or disabled. The instrument cluster on the dash indicated brake system and traction control failures. The brake system problem was verified by Michael Bresnock who noted a brake application allowed the pedal to travel almost to the floor board. Michael Bresnock was not able to verify the traction control system failure. Moreover, Michael Bresnock was unable to move the car out of park when he first inspected the car and expressed his belief that a bent transmission linkage accounted for the inability to shift the car into gear. There were missing lug nuts and loose lug nuts on the wheels of the car. Without functioning brakes, an operable transmission or secure wheels, it is unlikely that the car was being driven.

11. State Farm speculated that the Corvette had to have been driven out of the hotel parking lot by whoever took it and points to Mr. Bresnock's report as support for that speculation. However, Mr. Bresnock's report does not say how the car left the lot. He merely says that whoever last drove the Corvette used a key.

Mr. Bresnock's report does not rule out towing as the means by which the Corvette was stolen from the hotel. Donal O'Shaughnessy, who repossesses cars via towing, explained that there was sufficient room to tow the car from where Long parked it and that contact marks on the undercarriage of the Corvette and the front bumper scratches indicated that the car had been towed. The claim file contains no indication that State Farm ever considered the possibility that

the Corvette was stolen via towing. The testimony of State Farm's claim supervisor that the Corvette could not be seen from the road is contrary to the photographs that plainly show otherwise.

12. Automobile theft is a serious problem in the Atlanta metropolitan area. The Dekalb County Police Department maintains an Auto Theft Unit. Detective Fitzpatrick of that unit provided reports to State Farm pertaining to the theft of Long's car. The first page of the materials he provided contains the following statement: "AUTO THEFT, METRO ATLANTAS FAVORITE GROUP PARTICIPATION SPORT." Given the magnitude of the car theft problem known to exist in the community, to guess that Long was responsible for this theft is not reasonable from a claims handling standpoint given that no one saw what happened.

13. State Farm based its denial of claim number 01-6596-564 on a financial motive but had documentation showing that Long was essentially debt free. Long acted responsibly when he received his personal injury settlement by paying off all of his credit card bills, his wife's car and his wife's student loans. He had a credit score of 651 which is considered fair/good. He receives a disability check each month that is more than adequate to pay his modest living expenses. He owned the Corvette free and clear, so if he wanted money for the car, he could have sold it.

Opinions:

After reviewing the materials listed above, I have formed the following opinions. I hold these opinions to a reasonable degree of certainty. These opinions are based upon my training and experience in the adjustment of insurance claims and my review of the facts of Mr. Long's claims.

1. **State Farm Fire and Casualty Insurance Company owed Martin Long various duties in the handling of the claim he filed under his automobile insurance policy.**

During the claim handling process, every insurer must treat its insured's interest equally with its own, must investigate claims fairly and objectively, and must not deny claims based on speculation and conjecture. State Farm's Auto Claim Manual acknowledges these basic principles and standards:

"STATE FARM'S CLAIM PHILOSOPHY IS TO PAY WHAT WE OWE— promptly, courteously and efficiently. To accomplish this each claim, large or small, should be handled only on its own merits, in accordance with the facts of the law, the law, and applicable coverage—not on the basis of a person's race, age, religion, sex, national origin, or any other irrelevant consideration. Our commitment to policyholders, claimants, and others with whom we do business, as well as our internal communications,

should clearly and consistently demonstrate this claim philosophy. State Farm's claim department has an obligation to its insureds to fairly and promptly investigate and then appropriately negotiate, settle or defend covered claims for damages."

In its statement of "Commitment to Our Policyholders", State Farm says:

"It is the responsibility of the State Farm claims staff to implement Company philosophy with respect to claim handling. Our commitment to our policyholders is to treat them like a good neighbor. We should:

- \$ Listen, be fair, be open, and carry out our part of the bargain under the contract in good faith.
- \$ Be familiar and in compliance with those laws and regulations that impact claim in the appropriate state, and treat policyholders consistent with requirements of the law.
- \$ Explain all relevant coverages under the policy. Encourage policyholders to report all losses and avail themselves of all benefits under their coverages.
- \$ Diligently investigate the claims to determine if a claim is valid. Reasonably evaluate the claim, and act promptly in resolving the claim. If it is necessary to reject a claim for coverage or damages, it should be done promptly and courteously, with an explanation for the decision.
- \$ Make an objective evaluation of the facts and circumstances supporting our policyholders' claims. Doing so helps insure our policyholders obtain all benefits available provided by the insurance policy.
- \$ Give insureds a reasonable opportunity to comply with their responsibilities under the policy. If a claim is rejected, be willing to listen to subsequent input from the insured. Complete any necessary follow-up in a timely fashion, giving due consideration to any additional findings.
- \$ Communicate with and be responsive to inquiries from insureds and their attorneys by promptly answering letters and phone calls.

In addition to our obligation to deal fairly with each policyholder, we also have an obligation to pay only covered claims in the proper amount. Payment of those claims not covered, or fraudulent claims, unnecessarily increases insurance costs for all policyholders.

In summary, we are committed to paying what we owe, promptly, courteously, and efficiently."

2. State Farm Fire and Casualty Company committed serious violations of insurance industry standards and best practices in its handling of claim

number 01-6596-564.

Martin Long submitted a claim under the automobile insurance policy that State Farm Fire and Casualty Company sold to him to cover his 2000 Chevrolet Corvette. This automobile insurance policy bears policy number 0886-750-01. The claim number for this claim was 01-6595-564. The claim that Mr. Long submitted under this policy was for the actual value of the car at the time that it was stolen from the hotel parking lot. This policy was in full force and effect on the date of the loss.

State Farm had no reasonably legitimate or arguable reason for refusing to pay Mr. Long's claim for the loss of his car. State Farm's speculation that Mr. Long participated in the theft of his car is an insufficient reason to have denied this claim and is not supported by an objective evaluation of the facts and circumstances. No witness claims to have seen Mr. Long remove his car from the parking lot after he and Valerie Ware Temple went up to their room for the night. At the time that State Farm denied this claim, it knew that Valerie Ware Temple confirmed that Mr. Long was with her in the hotel room from the time that they parked the car on the night of the 18th until they discovered the car was gone the next morning. An objective assessment of this evidence shows that Mr. Long did not have the opportunity to steal his car. Mr. Long parked his car in plain view of a hotel security camera. Unknown to Mr. Long, the camera was not working at the time of the theft. Mr. Long did not learn that the camera was inoperable at the time of the theft until after he reported the theft to hotel management and asked to view the security camera footage.

Martin Long's inability to produce a second set of keys for the Corvette was not a reasonably legitimate reason to refuse his claim. At the time that State Farm refused its claim, it knew that the dealer who sold Martin Long the car told State Farm that he believed that only one set of keys came with the car and that any second set of keys may have been in the car at the time that it was stolen and ransacked.

State Farm's speculation that a second set of keys must have been used to drive the car from the parking lot is in conflict with other evidence. The brake system on the Corvette was not functional when the car was recovered. All of the brake fluid had been drained and brake system components were missing or disabled. Without functional brakes, it is not likely that the car was being driven. The damage to the front bumper and contact marks on the undercarriage discovered after the car was recovered suggest a likelihood that the car was towed from the hotel parking lot by the thieves.

The State Farm claim file contains no suggestion as to the identity of the person or persons who took the car from the parking lot at the hotel. No arrests have ever been made. The Atlanta metropolitan area is a big city with a well-known auto theft problem. Neither the police nor State Farm undertook to perform forensic analysis of the car after it was recovered in an effort to determine the identity of the thieves. At the time that State Farm denied this claim, it knew that another car had been broken into at the hotel during the same time frame when Mr. Long's car was stolen.

State Farm's handling of claim number 01-6596-564 reflects a predisposition for denying it. State Farm referred Mr. Long's claim to its special investigation unit six days after he reported the car stolen. From the beginning, State Farm's claim file documentation reflects State Farm's suspicion that Mr. Long stole his own car for financial reasons. Not only did its investigation fail to disclose any objective reasonably legitimate reason for concluding that Mr. Long stole his own car, State Farm's investigation failed to establish any objective reasonably legitimate reason for concluding that Mr. Long had a financial motive for stealing his own car. Mr. Long was essentially debt free when his car was stolen. He had paid off his credit card bills, his wife's car and his wife's student loans with the proceeds that he received from the settlement of his on-the-job injury claim. He had a good credit score. He received a monthly disability check that was more than adequate to pay his modest living expenses. He owned the Corvette free and clear and could have sold it easily and quickly. At the end of the day, the facts established by the investigation did not support the theory that Mr. Long had a financial motive for having his car stolen.

Numerous other facts negate State Farm's speculation that Mr. Long was somehow involved in having his car stolen. Mr. Long had spent time and money improving the car from the time he purchased it. In fact, he took his car to Big Ten Tires to have work performed on February 18, 2005, the same day he parked his car in the hotel parking lot before it was stolen.

Without objective evidence of a financial motive, State Farm had no reasonably legitimate or arguable reason for denying his claim on that basis. Likewise, State Farm's investigation does not support that he made a misrepresentation concerning a material fact regarding claim number 01-6596-564. Mr. Long's failure to disclose that he was with Valerie Ware Temple, a married woman, at the time that his car was stolen is not a legitimate reason to deny him insurance coverage for the theft of his car. It is clear that Mr. Long was trying to save his companion from embarrassment. He advised the State Farm claim agent of her presence as soon as the recorder was turned off. State Farm had the opportunity to interview Valerie Ware Temple two months before denying the claim. State Farm was able to confirm with Ms. Temple that Mr. Long was with her and thus did not have the opportunity to take his car. Denying Mr. Long coverage based on his reluctance to say on a recorded statement that he was with a married woman is an irrelevant consideration which State Farm's own policy manual says should not be a basis for deciding a claim.

State Farm's assertion that Mr. Long misrepresented material facts concerning who called the police on the morning that the theft of the Corvette discovered should certainly not be the basis of denying any claim. The undisputed proof shows that the theft was reported to police on the morning it was discovered. It is ludicrous from a claim handling standpoint to suggest that who placed such a call dictates whether a claim is paid or rejected.

Mr. Long made a valid claim under his automobile insurance policy. State Farm should have paid Mr. Long for the theft of his car. State Farm breached its contract with Mr. Long by not paying him under the automobile insurance policy for the loss of his car. State Farm lacked


any objective, reasonably legitimate or arguable reason for refusing to pay the claim under his automobile policy for the loss of his car. State Farm's conduct was in violation of its obligations of good faith and fair dealing with Mr. Long. The reasons cited by State Farm for denying Mr. Long's claim under his automobile insurance policy reflect bad faith on the part of State Farm.

3. Martin Long made no material misrepresentations in the presentation of claim number 01-6595-564.

To the extent that State Farm denied Long's automobile claim because of claims he made for personal property under the homeowner's policy, it violated accepted insurance standards, as well as applicable insurance law. Section 27-14-28, Code of Alabama (1975) provides:

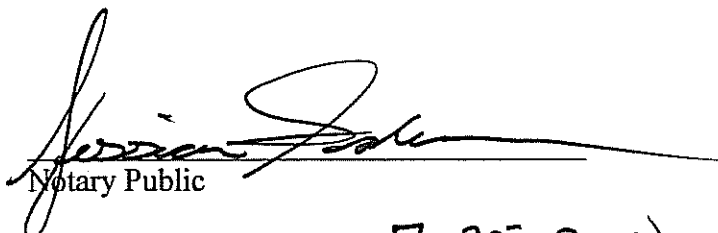
No misrepresentation in any proof of loss under any insurance policy shall defeat or void the policy unless such misrepresentation is made with actual intent to deceive as to a matter material to the insured's rights under the policy.

In Long's claim for the fair market value of his Corvette, he made no material misrepresentations affecting State Farm's rights under that policy. The amount that he claimed in his Affidavit of Theft was less than State Farm determined the fair market value of the stolen Corvette to be. Long's representations in a proof of loss for another claim under another policy is not material to his claim for the fair market value of the Corvette. State Farm's handling procedures mandate that "each claim, large or small, should be handled on its own merits." By basing any part of its denial of his automobile claim on representations that he made in the proof of loss for his homeowner's claim, State Farm violated proper insurance practices and standards. Whether Mr. Long added a pair of shoes to his proof of loss for his contents claim under a separate homeowner's policy is simply of no consequence to a proper evaluation of his claim for the fair market value of the Corvette under the automobile policy for which he paid a separate premium. It is worth noting that many individuals have different insurance carriers for their automobile coverage versus their homeowner's coverage. It would be absurd to suggest that one company could deny coverage for a claim made against it because the insured inflated a claim he made against another insurer under a separate policy. Yet that is essentially just what State Farm seeks to do in this case and it is wrong.

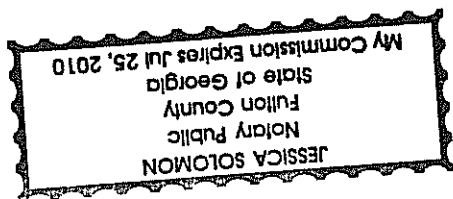

ROBERT J. SHARP

Sworn to and subscribed before me this

31 day of May, 2007.


Notary Public

My Commission Expires: 7-25-2010



05-21-2007Donal'o'shaughnessy

00001 { 8:57:08am}

01 IN THE UNITED STATES DISTRICT COURT
02 FOR THE MIDDLE DISTRICT OF ALABAMA
03 NORTHERN DIVISION
04 CASE NO.: 2:06cv816-MHT
05
06 MARTIN O. LONG,
07 Plaintiff,
08 V.
09 STATE FARM FIRE AND CASUALTY COMPANY,
10 Defendants.
11

12
13 S T I P U L A T I O N S
14
15

16 IT IS STIPULATED AND AGREED by and
17 between the parties, through their respective
18 counsel, that the deposition of DONAL
19 O'SHAUGHNESSY may be taken before STACEY L.
20 JOHNSON, Commissioner, at the Offices of Burge &
21 Burge, 2001 Park Place North, Suite 850,
22 Birmingham, Alabama, on the 17th day of May,
23 2007.

00002 { 8:57:08am}

01 IT IS FURTHER STIPULATED AND AGREED
02 that the signature to and the reading of the
03 deposition by the witness is hereby waived, the
04 deposition to have the same force and effect as
05 if full compliance had been had with all laws
06 and rules of Court relating to the taking of
07 depositions.

08 IT IS FURTHER STIPULATED AND AGREED
09 that it shall not be necessary for any
10 objections to be made by counsel to any
11 questions except as to form or leading
12 questions, and that counsel for the parties may
13 make objections and assign grounds at the time
14 of trial, or at the time said deposition is
15 offered in evidence, or prior thereto.

16 IT IS FURTHER STIPULATED AND AGREED
17 that the notice of filing of the deposition by
18 the Commissioner is waived.
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00003 { 8:57:08am}

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00005 { 8:57:08am}

01 A P P E A R A N C E S

02 FOR THE PLAINTIFF, MARTIN O. LONG:

03 BURGE & BURGE

03 F. Tucker Burge

04 2001 Park Place North

04 Suite 850

05 Birmingham, Alabama 35203

05

06

07 FOR THE DEFENDANT, STATE FARM FIRE AND CASUALTY

08 COMPANY:

09 HELMSING, LEACH, HERLONG, NEWMAN & ROUSE

09 James B. Newman

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11 150 Government Street

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12 Mobile, Alabama 36602

12 (251) 432-5521

13

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05-21-2007Donal O'Shaughnessy

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00006 { 8:57:08am}

01 I, STACEY L. JOHNSON, a CSR of Montgomery,
 02 Alabama, and Notary Public for the State of
 03 Alabama at Large, acting as Commissioner,
 04 certify that on this date, as provided by the
 05 Federal Rules of Civil Procedure and the
 06 foregoing stipulation of counsel, there came
 07 before me at 2001 Park Place North, Suite 850,
 08 Birmingham, Alabama, beginning at 9:01 a.m.,
 09 DONAL O'SHAUGHNESSY, witness in the above cause,
 10 for oral examination, whereupon the following
 11 proceedings were had:

12

13 (Whereupon, Defendant's Exhibit
 14 Numbers 1 through 3 were marked for
 15 identification and copies of same are
 16 attached hereto.)

17

18 DONAL O'SHAUGHNESSY,
 19 the witness, after having been first duly sworn
 20 to speak the truth, the whole truth, and nothing
 21 but the truth, testified as follows:

22

EXAMINATION

23 BY MR. NEWMAN:

00007 { 8:57:10am}

01 Q All right. Would you state your name,
 02 please, sir?

03 A Donal O'Shaughnessy.

04 Q And where do you live?

05 A Alabaster.

06 Q And what's your address,

07 Mr. O'Shaughnessy, your home address?

08 A 103 Maple Crest Drive.

09 Q And how long have you lived there?

10 A Eight years.

11 Q Mr. O'Shaughnessy, my name is Jim
 12 Newman. I represent State Farm Fire and
 13 Casualty in this case. I'm going to be asking
 14 you some questions this morning about your
 15 expert opinions in this case. If you don't
 16 understand any of my questions, I'd ask you to
 17 stop me and ask me to rephrase them; is that
 18 fair?

19 A Sure.

20 Q Otherwise, if you answer them, I'm
 21 going to assume that you understood them and
 22 that you answered what I asked; fair enough?

23 A Okay.

00008 { 9:01:53am}

01 Q How old are you?

02 A 45.

03 Q Are you married?

04 A Yes.

05 Q Any children?

06 A No.

07 Q How long have you been married?

08 A Eight years.

09 Q How many times have you been married?

10 A Just once.

11 Q And your wife's name?

12 A Cathy O'Shaughnessy.

13 Q All right. Does she work?

05-21-2007Donald O'Shaughnessy

14 A Yes.
 15 Q Where does she work?
 16 A Southern Company.
 17 Q And what does she do for Southern
 18 Company?
 19 A System analyst for the...
 20 Q Some office-type --
 21 A Yes.
 22 Q -- technology --
 23 A She's a manager.
 00009 { 9:02:21am}
 01 Q -- work? Okay. And how long has she
 02 worked there?
 03 A 20 years.
 04 Q Since before y'all were married, then?
 05 A Yes.
 06 Q What is your present employment?
 07 A I own a recovery business.
 08 Q How many people work for you?
 09 A About five or six right now.
 10 Q And what kind of equipment do you --
 11 and by recovery, are we talking about --
 12 A Repossession company.
 13 Q Repossession of automobiles?
 14 A Yes. Cars, trucks, anything. Anything
 15 they pay me to do.
 16 Q Okay. Well, you don't repossess
 17 furniture, do you?
 18 A I have. Not recently.
 19 Q Okay. But what your primary business
 20 is is repossess --
 21 A Automobiles, yes.
 22 Q -- vehicles?
 23 A And one thing that she's going to have
 00010 { 9:03:10am}
 01 to do is take everything we have down here that
 02 we say. She'll be taking it down. You
 03 understand that?
 04 A Uh-huh.
 05 Q And the reason I point that out is
 06 because you've got to let me finish before you
 07 answer.
 08 A Oh, okay.
 09 Q Because she can't do two -- she can,
 10 believe it or not, do two at once, but it's hard
 11 for her.
 12 A Okay.
 13 Q Good. And if it -- you know, we'll
 14 start over if it happens. It's not -- it won't
 15 be a fatal thing.
 16 Q What type of equipment do you have in
 17 your business?
 18 A Well, myself I drive the company truck,
 19 but I have rig in the back of it, a sling truck
 20 that folds out. I can tow things. My partner
 21 has one, the same. We have three other wheel
 22 lift trucks and one roll back wrecker.
 23 Q All right. Now, we're going to have to
 00011 { 9:04:00am}
 01 start over again, because I need to be educated
 02 on those things. First of all, I guess, what's
 03 the name of your business?
 04 A American Lender Service Company.

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05 Q Is it a corporation?
06 A Yes.
07 Q And are you one of the primary
08 stockholders?
09 A Yes.
10 Q How much of the stock do you own?
11 A 50.
12 Q And then who is your partner?
13 A Scott Campbell.
14 Q And he owns the other 50 percent?
15 A Yes.
16 Q And between -- and then you say that
17 y'all have three or four employees?
18 A Three office employees and three other
19 repo men and two lot guys.
20 Q Okay. Now, describe for me the
21 equipment that you have there that you use. I
22 understand you may have a personal vehicle
23 that's a company-owned vehicle, but I'm talking
00012 { 9:04:48am}
01 about equipment that you actually would use to
02 repossess automobiles with, assuming you do not
03 have a key.
04 A All right. Well, the truck I have,
05 that's what I do all of my repossession out of.
06 It's the one I drive back and forth to my home
07 and all. It's a stow away lift. It folds into
08 the bed of the truck and pulls the tailgate up
09 by it where you can't tell it's a repo truck
10 until I hit a switch and it folds out of the
11 back. It has two slings, two rubber straps on
12 it that will lift the vehicle up. Then I tow it
13 and I chain it up with some chains, J hooks.
14 And our other three trucks are wheel lift
15 trucks.
16 Q Let's stop with that first truck right
17 now.
18 A Uh-huh.
19 Q You call it a sling truck?
20 A Yes.
21 Q And when you fold the mechanism out of
22 the bed of the truck, does it stick up in the
23 air?
00013 { 9:05:36am}
01 A Yes.
02 Q And then it has cables that come down
03 from that that you would attach to the vehicle?
04 A Yes.
05 Q And then is that designed to pick up a
06 car -- a vehicle from the rear or from the
07 front?
08 A Either one.
09 Q Okay. Does it make a difference?
10 A Well, if you have a -- if the vehicle's
11 powered by the rear, you'll want to pick it up
12 from the rear because that's -- get the drive
13 axle off the ground where it will tow freely.
14 Q And I guess if it's a front wheel
15 drive, you'd want to pick the front up?
16 A Yes.
17 Q All right, sir. So you know in your
18 business probably most of the time whether a car
19 is front wheel drive or rear wheel drive?

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20 A Yes.
21 Q Do you try to find that out before you
22 go?
23 A I pretty much know what it is, but if
00014 { 9:06:26am}
01 I'm not sure, I can just look up under it.
02 Q Okay. Tell me how you go about
03 attaching -- you say the J hooks are at the end
04 of the cables?
05 A Well, they're separate from the sling
06 itself, but it's got four hooks on the -- on the
07 sling. So on the actual lift part that I just
08 pull the chain across it and attach it to the
09 hook.
10 MR. BURGE: Do you have those here
11 today in the parking lot?
12 THE WITNESS: Yes, they're in my truck.
13 MR. BURGE: So we can go take pictures
14 afterwards if that will help.
15 A But a lot of cars -- the tow trucks,
16 it's stationary. Mine just folds in and out, so
17 I have a little extra advantage. But most of
18 them, you can see them driving down the road.
19 They've got a big A-frame --
20 Q Yeah.
21 A -- stuck to the back of it.
22 Q I've seen those. Yours is like that
23 except for it folds down --
00015 { 9:07:14am}
01 A Right.
02 Q -- into the truck?
03 A Yes.
04 Q And the advantage of that is that
05 people don't know you're a tow truck, I guess?
06 A Right.
07 Q So you can get and be in the -- right
08 up to the act of repossessing before they know
09 you're a tow truck?
10 A Yes.
11 Q And you say your partner drives the
12 same thing?
13 A Yes.
14 Q Is that like a three-quarter ton pickup
15 that you would have?
16 A Yes.
17 Q And I guess it's four-wheel drive and
18 it's a v8 engine and it's probably a fairly
19 powerful truck?
20 A It's not four-wheel drive, but it's got
21 a v8 in it, yes.
22 Q Is it a GM truck?
23 A Yes.
00016 { 9:07:53am}
01 Q What other equipment do you have there?
02 A The three wheel lift trucks. Those
03 just fold down. And it's got the jaws on the
04 back of it. You just slide up under where you
05 want to pick up either the front or the back of
06 the truck, hit another button and it will
07 separate and grab the wheels and you just lift
08 it up and go from there.
09 Q Well, that sounds like to me that it's
10 similar to a forklift; is that right?

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11 A Yes. Similar, yeah.
12 Q Explain it to me one more time,
13 Mr. O'Shaughnessy. I don't know if I've ever
14 seen one of those.
15 A It's got a boom on the back of it
16 (indicating), and it's got the jaws folded in so
17 when you -- you lower it down and it'll just be
18 one rod going up between the wheels. You get
19 back far enough until the rods -- the two pieces
20 hit the front -- front of the tire. Then you
21 hit another button and those will expand and it
22 will grab the back of the tire. Then you just
23 lift it up.

00017 { 9:08:47am}
01 Q All right. Now, once you lift it up,
02 do you just keep it on those rods that it's on
03 or do you then move the vehicle some other way?
04 A Well, if it's a -- in a bad situation,
05 you can just move it off to where you can get it
06 a little more secure and then you strap the
07 tires down or you can strap it down as soon as
08 you pick it up.
09 Q But you take it to wherever you're
10 going to take it with those rods --
11 A Yes.
12 Q -- extended; is that right?
13 A Yes.
14 Q Okay. So you don't let it down and
15 then attach J hooks and pick it back up the same
16 way that you do your truck? It's a different --
17 A No.
18 Q -- system?
19 A No. It's totally different.
20 Q When would you use one and not the
21 other?
22 A You don't want to -- it might damage --
23 if the front end's got a bunch of little

00018 { 9:09:35am}
01 spoilers on it or maybe it's kind of weak, not a
02 steel bumper. I might damage some. Those are
03 damage free. The wheel lifts are damage free.
04 Q How many of those do you have?
05 A Three wreckers.
06 Q And is that the total that you've got
07 are the two that you and your partner drive and
08 then the other three?
09 A I have the three wheel lifts, the two
10 sling trucks, and a roll back wrecker.
11 Q All right. What's a roll back wrecker?
12 A That's when you just -- it's a flatbed
13 where you put the vehicle totally up on the bed
14 of the truck.
15 Q And that's the one where the -- it's a
16 flatbed and you put a ramp down from the flatbed
17 down to the pavement, attach some type of a
18 pulling device, and actually pull the vehicle up
19 on the flatbed?
20 A Yes.
21 Q Okay. And I guess you've got some type
22 of hydraulic system that would pull -- is it
23 hydraulic, or is it --

00019 { 9:10:29am}
01 A Yeah. The bed actually -- it rolls

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02 back and then tilts back, and you shift it all
03 the way to the front of the vehicle and then you
04 hook a winch up to it and winch it on there.

05 Q Is the winch just electrical run?

06 A Yes.

07 Q Electric winch?

08 A Yes.

09 Q Just like you'd have on a hunting truck
10 or something like that?

11 A Yes.

12 Q And then you just pull the vehicle up
13 on the flatbed surface?

14 A Right.

15 Q Okay. And when do you use that one as
16 opposed to the other two?

17 A Something that's real heavy, you know,
18 I can't tow with either of our trucks or it's a
19 total loss and you can't tow it, like all the
20 tires are blown off of it or mangled and you
21 can't tow it.

22 Q Okay. Which of those is the most
23 maneuverable of those three that you've told me

00020 { 9:11:21am}

01 about?

02 A They're all about the same.

03 Q You can get them all -- which one is --

04 A The wheel lift and my sling, they're
05 both about the same.

06 Q The wheel lift and your sling are about
07 the same?

08 A Yes.

09 Q The flatbed is a little longer, isn't
10 it?

11 A Well, ours is biggest. It's probably
12 about 30 feet long. It's a big truck. They
13 make smaller ones, but that's a -- that's kind
14 of hard to maneuver around.

15 Q All right. Now, when you pick up a
16 rear wheel drive vehicle from the rear, under
17 the present system that most cars have, the
18 steering column is locked in place; correct?

19 A A lot of them.

20 Q You're able to tow that vehicle even
21 though you can't steer the vehicle?

22 A Yes, if the steering is locked
23 straight.

00021 { 9:12:22am}

01 Q If it's locked straight?

02 A Yes.

03 Q Is there any problem taking a curve or
04 anything like that?

05 A No.

06 Q Okay. Now, if the steering is locked
07 at an angle, are you able to tow the vehicle?

08 A It depends on how bad. If it's real
09 bad, you might have to get it out of there and
10 then maybe call a roll back to come pick it up.

11 Q Roll back is --

12 A A roll back wrecker. That big flatbed.

13 Q Flatbed. Thanks. Okay. Now, when the
14 vehicle is in park, if it's an automatic
15 transmission like this 2000 Corvette we're
16 talking about, is that going to make -- is that

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17 going to complicate the ability to tow the
 18 vehicle?
 19 A If it was what?
 20 Q In park.
 21 A Well, depends if it was backed in or
 22 pulled in straight.
 23 Q If it's pulled in straight, it --
 00022 { 9:13:58am}
 01 A It wouldn't be any problem.
 02 Q Okay. Does the alarm system on a
 03 vehicle go off when you use this recovery
 04 process?
 05 A No.
 06 Q Never?
 07 A No.
 08 Q Okay. Why is that? Because you don't
 09 breach one of the secured areas?
 10 A I would assume, yes.
 11 Q You don't break the glass or open the
 12 door or anything like that?
 13 A Right.
 14 Q Okay. How do you get your
 15 assignments? Are you called by the financing
 16 companies?
 17 A Some we get off our computer they send
 18 to us and some are faxed.
 19 Q Okay. Do they give you the location of
 20 the vehicle?
 21 A Yes.
 22 Q What happens if you go to that location
 23 and the vehicle is not there?
 00023 { 9:14:57am}
 01 A Keep checking for it and knock on the
 02 door, talk to some neighbors.
 03 Q Do you ever have to do it when they
 04 don't know about it?
 05 A That's the best time.
 06 Q And you do that at night usually?
 07 A I do -- I own the company, so I do most
 08 of my stuff during the day. And all the guys I
 09 hire, they work at night various times. Night
 10 is usually the best time.
 11 Q How many -- what percentage of time do
 12 the people who own the car know that you're
 13 coming to tow it away?
 14 A Well, a lot of them know they're behind
 15 and some are trying to work things out. I'd say
 16 90 percent of the time they know.
 17 Q They know, but how many of the times
 18 are they told you're coming to take it away as
 19 opposed to --
 20 A Never.
 21 Q Never?
 22 A Well, I don't know about never, but
 23 probably a low percentage.
 00024 { 9:15:48am}
 01 Q I mean, they know because they know
 02 they're behind, there's a chance somebody is
 03 going to come get it; right?
 04 A Yes.
 05 Q But as far as calling them up and
 06 saying, hey, we're going to come get your car,
 07 make sure you park it straight in the place and

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08 have it available for us, that doesn't happen?
09 A well, the voluntary repossession they
10 do.

11 Q Oh, there are some of those?

12 A They've called them and say, okay, we
13 can't pay for it; I'm going to leave the keys up
14 under the mat, and you can come get it.

15 Q What percentage of the time does that
16 happen?

17 A 15, 20.

18 Q Okay. Now, out of the total number of
19 repossessions that you do, Mr. O'Shaughnessy,
20 how many are done with the key and how many are
21 done without a key?

22 A I'd say zero percent with the key.

23 Q Zero percent?

00025 { 9:16:30am}

01 A Unless it's a voluntary repossession.

02 Q Good. Because you've told me 15 to 20
03 percent were voluntary; right?

04 A Right.

05 Q In which case, they might give you the
06 key?

07 A Yes.

08 Q So you're saying that probably zero
09 percent of the involuntaries?

10 A Well, the ones that I get that I don't
11 talk to anybody, I go up to their house and the
12 car is there and I might start hooking it up and
13 they'll come out and want to get their personal
14 effects out and they'll give me a key.

15 Q Okay. So that happens some?

16 A It's happens a lot.

17 Q Okay. That's if they actually see you
18 do it?

19 A Yes.

20 Q If you do it at night, they wouldn't
21 see you do it? Well, that probably wouldn't
22 happen, would it?

23 A They might hear you and come out, but

00026 { 9:17:15am}

01 we'll just tow it off without anything.

02 Q Okay. How often are you supplied a key
03 in advance by the financing company?

04 A None.

05 Q Never?

06 A We have -- some of our accounts have
07 key codes on them. We can go get a key cut. A
08 lot of them they'll just maybe turn the switch,
09 like they have a -- just the key fob or the --
10 what have they got -- the little code in the key
11 head that matches. I can't remember the -- but
12 it will just turn the switch and it won't start
13 the vehicle. But on a pickup truck or
14 something, you can straighten the wheels out of
15 it or anything or something like that.

16 Q What would be the advantage to being
17 able to do that, to straighten the wheels?

18 A If it's a pickup truck you don't -- if
19 the steering is cocked all the way to one side,
20 it's going to -- you pick it up and start going,
21 the front end is going to shift all the way to
22 one side, so you need -- and the steering wheel

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23 is locked. So with a key, you unlock it,
00027 { 9:18:15am}
01 straighten the wheel up, and tow it off
02 straight.
03 Q Okay. Why a pickup truck makes a
04 difference from other types of vehicles?
05 A It's rear wheel drive and you've got to
06 pick it up from the rear and the front end is --
07 Q So any -- you're talking about not just
08 a pickup truck, but any rear wheel drive
09 vehicle --
10 A Yes.
11 Q -- would have that same problem?
12 A Yes.
13 Q All right. But you're never supplied a
14 key from someone to go and crank up the vehicle
15 and move it?
16 A Right.
17 Q You either have to get the key on your
18 own or the person would come out and voluntarily
19 give you a key?
20 A Yes.
21 Q Now, you've been doing this kind of
22 business for how long?
23 A 18 years.
00028 { 9:19:01am}
01 Q How did you get started in it?
02 A I used to work at U.S. Pipe Foundry in
03 Bessemer and we went on strike. And my partner,
04 Scott, he's being doing this longer than I
05 have. He just needed some help, and I needed a
06 job while we were on strike. I started helping
07 him repossess cars. And came off strike and I
08 didn't want -- I hated it there anyway, so I
09 just kept on doing this. And eventually just
10 came -- we bought the company.
11 Q All right. Mr. O'Shaughnessy, do this
12 for me if you will. How old are you?
13 A 45.
14 Q Take me from high school -- where you
15 graduated from high school -- and kind of give
16 me a very -- you know, just a running history
17 summary of your work experience.
18 A I graduated from WA Berry High School,
19 went to work for a little -- you know, doing odd
20 things. Then started --
21 Q For what doing odd things?
22 A Like during high school.
23 Q Okay.
00029 { 9:19:54am}
01 A You know, just -- then I started
02 working at U.S. Pipe.
03 Q So you went to work for U.S. Pipe right
04 out of high school?
05 A No, not right out of -- you know, a few
06 years later. I think I was there for eight
07 years or something like that. Then I went to
08 UAB on and off for a while. That didn't work
09 out, so I -- then I started repossessing cars.
10 Q What did you do between the time that
11 you were at U.S. Pipe and the time you graduated
12 from high school? What did you do then?
13 A I think I worked at Don Drennen.

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14 Q Doing what?
 15 A Doing some cleanup, stuff like that.
 16 Q Cleaning cars?
 17 A Yes.
 18 Q Okay. Now, then, so you had, I guess,
 19 odd jobs -- well, not odd jobs, but you didn't
 20 have -- I get they were permanent jobs, weren't
 21 they, between high school and the time you went
 22 to U.S. Pipe?
 23 A Yes.
 00030 { 9:20:44am}
 01 Q But you had several different types of
 02 jobs, is that right, or did you work at Don
 03 Drennen the whole time?
 04 A I worked at a few restaurants, you
 05 know, as a cook and as just -- you know, looking
 06 for something better, you know.
 07 Q Okay. How long did you do that? Three
 08 or four years, you say?
 09 A Probably something like that. I don't
 10 even know if it was that long. I can't
 11 remember.
 12 Q And then you went to work for U.S.
 13 Pipe, and how long did you work at U.S. Pipe
 14 before they went on strike?
 15 A Eight years, I think.
 16 Q What did you do there?
 17 A Everything. We rolled pipe and then I
 18 went to the shipping department. We were
 19 loading trucks.
 20 Q Did you have any kind of a job
 21 description, job title, like, you know, pipe
 22 roller, pipefitter?
 23 A Yes. It was a pipe roller. That was
 00031 { 9:21:37am}
 01 the prescription then. For the last probably
 02 four or five years, I ran a forklift.
 03 Q And that was your job at the time that
 04 you got laid off was running a forklift? You
 05 went on strike?
 06 A I quit. Right.
 07 Q And so the whole company -- the whole
 08 union went on strike there?
 09 A Yes.
 10 Q What union was that?
 11 A I have no idea.
 12 Q Okay.
 13 A Pipefitters maybe. Something like
 14 that. I don't know.
 15 Q And you were a member of the union?
 16 A Yes.
 17 Q You don't remember what it was?
 18 A No.
 19 Q Are you still a member of it?
 20 A No.
 21 Q So you go on strike, and how long were
 22 you on strike before you started working with
 23 your partner?
 00032 { 9:22:16am}
 01 A A couple of weeks.
 02 Q And I'm sorry. I've forgotten his
 03 name.
 04 A Scott Campbell.

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05 Q How did you and Mr. Campbell know each
06 other?
07 A We've been friends. He went to a
08 different high school, but just through other
09 friends we've been friends for a long time.
10 Q Is he about your age?
11 A Yes.
12 Q So he had been doing it ever since he
13 got out of high school, I guess?
14 A Yes.
15 Q And then, I guess, y'all started
16 smaller than you are now and the business grew
17 over time?
18 A Yes.
19 Q What companies do you repossess cars
20 for?
21 A Ford Motor Credit, Landmark Credit
22 Union.
23 Q GMAC?
00033 { 9:23:01am}
01 A Yes. But we don't have their business
02 right now. We used to do a lot of business for
03 GMAC. City Financial and just other kind of
04 little smaller various ones.
05 Q Is Ford Motor Credit your largest?
06 A I would say so, yes.
07 Q Have you ever been convicted of a
08 crime?
09 A Yes.
10 Q What?
11 A Let's see. I got in trouble -- let's
12 see. Public intoxication. And then I guess the
13 police, they beat me up or something. They
14 charged me with -- he hurt himself beating me
15 up. So I can't exactly -- what it was, I'm not
16 sure.
17 Q Charged with resisting arrest?
18 A Probably.
19 Q Any other trouble?
20 A No.
21 Q That's it?
22 A Huh-uh.
23 Q No other crimes?
00034 { 9:24:01am}
01 A Not that I can think of right now.
02 Q I'd think you'd remember, wouldn't you?
03 A well, I think I had a DUI 20, 30 years
04 ago.
05 Q When was the time -- the public
06 intoxication, the resisting arrest charge?
07 A 15, 20 years.
08 Q Okay. You carry a firearm when you're
09 doing these repossessions?
10 A I do, yes.
11 Q And is it licensed with the County?
12 A Yes.
13 Q And what kind of firearm do you carry?
14 A Taurus .9 millimeter
15 Q Automatic?
16 A Yes. I don't carry it with me. It's
17 just in my truck.
18 Q That's what I mean, you've got it in
19 your truck?

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20 A Yes.
 21 Q Where do you keep it in the truck?
 22 A It's in the overhead storage thing.
 23 Q Okay. Have you ever had to use it?
 00035 { 9:24:46am}
 01 A No.
 02 Q Let me show you if I could here what's
 03 been marked as Defendant's Exhibit 1, which is
 04 the -- asked you to bring various things. It's
 05 your notice of deposition. Did you get a copy
 06 of that?
 07 A Yes.
 08 Q From somebody somewhere?
 09 A Yes.
 10 Q And it asked you to bring certain
 11 things with you. One of the things that it
 12 asked you to bring with you were all the
 13 materials you reviewed. Did you bring those?
 14 A I forgot them.
 15 Q I think Mr. Burge has tried to, you
 16 know, provide those. As I understand it, the
 17 things that you looked at were the Auto Claim
 18 Committee Report; is that right?
 19 A Yes.
 20 Q And what was that? Do you know what
 21 that was? The Auto Claim Committee Report?
 22 A Not really.
 23 Q I mean, did you read it? I tell you
 00036 { 9:25:59am}
 01 what I want -- this one has certain things on it
 02 that --
 03 MR. BURGE: I think I made a copy for
 04 you in the materials when I was trying to
 05 recreate his file.
 06 MR. NEWMAN: You did?
 07 MR. BURGE: I thought I did.
 08 MR. NEWMAN: Sure did. Thank you,
 09 Tucker. You sure did.
 10 Q All right. Let's mark that as
 11 Defendant's Exhibit 4.
 12
 13 (Whereupon, Defendant's Exhibit
 14 Number 4 was marked for identification
 15 and copy of same is attached hereto.)
 16
 17 Q So let me show you Defendant's Exhibit
 18 4. That's the Auto Claim Committee Report. Did
 19 you review that, or did you just receive that?
 20 A I read it.
 21 Q Okay. Was there anything in that that
 22 bore on your opinions, anything that you took
 23 out of that?
 00037 { 9:26:53am}
 01 A No.
 02 Q Okay. You read it and looked at it and
 03 decided that it was not relevant to your
 04 opinion; correct?
 05 A Right.
 06 Q All right. Now, let me show you what's
 07 been marked as -- what we will mark as
 08 Defendant's Exhibit 5 and 6...
 09
 10 (Whereupon, Defendant's Exhibit

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11 Numbers 5 through 7 were marked for
12 identification and copies of same are
13 attached hereto.)

14
15 Q That is -- let me see that back for a
16 second. Make sure I'm looking at the same thing
17 here. Now, I'll show you what's been marked as
18 Defendant's Exhibit 5, 6, and 7. Do you
19 recognize those?

20 A Yes.

21 Q Did you review those?

22 A Yes.

23 Q Were there materials in those that were
00038 { 9:28:50am}

01 relevant or significant to your opinions?

02 A Not that would change anything.

03 Q That's not what I asked. I asked you
04 if there were things in there that you used in
05 order to develop your opinions.

06 A No.

07 Q Nothing in there you used to develop
08 your opinion?

09 A No.

10 Q Not the condition of the vehicle as he
11 found it or anything like that?

12 A No.

13 Q What are those three exhibits there?

14 A That one's an Auto Claim Committee
15 Report.

16 Q No. We've talked about that, and you
17 said you didn't get anything out of that. What
18 are the three -- 5, 6, and 7? Didn't I give you
19 three there?

20 A Yeah, I think so.

21 Q Yeah, there you go. What are -- do you
22 know what they are?

23 A Just where somebody hired the guy that
00039 { 9:29:52am}

01 looked over the cars and just what they thought
02 happened, just marks and scratches and
03 everything that were on the vehicle. The type
04 of keys that was used, the transponders, and all
05 that, I assume.

06 Q Is that all of them, or are there
07 differences in those three?

08 A This one just says that the horn
09 disabling didn't work.

10 Q I don't think that's what -- you're
11 talking about 6?

12 A Yes.

13 Q Is that what that says, or does that
14 describe the type of security that it has?

15 A Yes.

16 Q All right. And then, I think, there's
17 another one that said when he checked it it did
18 not work; right?

19 A Yes.

20 Q All right. But you're saying none of
21 those were relevant to your opinion, none of the
22 facts or findings in there had anything to do
23 with your opinion?

00040 { 9:30:49am}

01 A Right.

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02 Q Did you personally inspect this
03 vehicle?

04 A No.

05 Q How did you determine what the
06 condition of it was at the time that it was
07 first discovered?

08 A I really didn't know what it was. Just
09 these pictures here. That's all I've ever seen
10 of --

11 Q So there were some things in these
12 reports that you used to develop your opinion,
13 then?

14 A Well, I just said that it could be
15 towed. There's nothing here that says it wasn't
16 towed.

17 Q Okay. With respect to the findings of
18 the condition of the car at the time that it was
19 recovered or when it was in the yard, I guess,
20 is a better way to put it -- I think that's
21 where Mr. Breznock first saw it was in a yard;
22 correct?

23 A I don't know.

00041 { 9:31:46am}

01 Q You don't know whether Mr. Breznock
02 inspected it on the scene when it was first
03 found or whether he inspected it in a yard after
04 it was towed to the yard by the police?

05 A No.

06 Q Okay. What is your opinion in this
07 case, Mr. O'Shaughnessy?

08 A That it's possible that it could have
09 been towed.

10 Q Is your opinion that it was definitely
11 towed or that it could have been?

12 A It could have been towed.

13 Q Okay. So you're not saying that as an
14 absolute matter of your opinion that it was
15 towed and the key was not used; correct?

16 A Right.

17 Q Let me show you what's been marked --
18 what we're going to mark as -- let me do this
19 while we're on this subject. Let's go back and
20 do this. Your opinion is that it was possible
21 to tow this car?

22 A Yes.

23 Q And what leads you to that opinion?

00042 { 9:32:57am}

01 Give me the facts that you can give me that
02 leads you to that opinion.

03 A Well --

04 Q Let's go back and let me say this. You
05 understand and I understand that it was towed
06 from the place it was recovered to a yard;
07 correct?

08 A Yes.

09 Q And it was towed again from that yard
10 to another yard; correct?

11 A Yes.

12 Q And there's a possibility that one or
13 other of those yards they might have towed it
14 around in that yard making place for other
15 vehicles; correct?

16 A Yes.

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17 Q So we know it can be towed; right?
 18 A Yes.
 19 Q So when I'm asking you about your
 20 opinion concerning the fact that it's possible
 21 to tow the car, I want to focus on where it was
 22 the night that it was lost from Mr. Long, who is
 23 the owner, at the Country Inn Suites. All
 00043 { 9:33:51am}
 01 right?
 02 A Yes.
 03 Q What is your basis of your opinion that
 04 it could be towed from that location?
 05 A It was missing, and I think the shifter
 06 was bent on it. I assumed it was -- the car was
 07 backed in, we think, or was it? Do we know?
 08 And there were no skid marks on the ground, so
 09 they bent the linkage to get it into neutral or
 10 to move it out of there without the tires
 11 locking up and leaving marks. And I think there
 12 was some front end damage where a possible sling
 13 was up under it. And I think maybe there were
 14 some chain marks up under the rear end where
 15 possible chains were hooked up to it.
 16 Q Okay. Let's go through that one. What
 17 was the -- what was the -- how was the car
 18 parked in the place that it was in?
 19 A I never saw it, so I'm not sure but --
 20 I don't know.
 21 Q You've never personally inspected it?
 22 A Right.
 23 Q I know that. How do you understand
 00044 { 9:34:51am}
 01 that it was parked?
 02 A Backed in.
 03 Q Backed in?
 04 A Uh-huh.
 05 Q So that would be with the rear against
 06 the curb and the front end pointed out?
 07 A Yes.
 08 Q So that -- as you've told me, that
 09 would create a little more of a problem for
 10 towing the vehicle than if he had pulled it in
 11 straight; correct?
 12 A Yes.
 13 Q So how -- what is your opinion on the
 14 way that it was towed from that location or from
 15 that position?
 16 A They backed into it and hooked it up
 17 from the front.
 18 Q All right. Wait a minute. Backed the
 19 tow truck --
 20 A Backed the tow truck up to the front
 21 end of the Corvette and then hooked it up from
 22 there. Then I guess broke the window and got
 23 the shifter and jammed it and bent the linkage
 00045 { 9:35:41am}
 01 into neutral.
 02 Q Have you ever done that?
 03 A Not on a Corvette. Other front wheel
 04 drive cars, yes.
 05 Q You've never done that on a Corvette?
 06 A No.
 07 Q Do you know how -- if it's possible to

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08 move the gear shift from park into neutral?
 09 A You have to have a key unless you force
 10 it.
 11 Q Okay. Is it possible to force a
 12 Corvette from park into neutral?
 13 A I have never done it, but I would think
 14 you could.
 15 Q And when this car was found, was it in
 16 park or neutral?
 17 A I don't know.
 18 Q Okay. Now, assuming -- so they would
 19 have broken a window; right?
 20 A Yes.
 21 Q Okay. Climbed into the vehicle?
 22 A Or opened the door.
 23 Q Opened the door?
 00046 { 9:36:31am}
 01 A Yes.
 02 Q Gotten into the driver's seat or
 03 passenger's seat, either one, I guess, and with
 04 as much force as it would take moved the shifter
 05 from park -- and we're talking about the gear
 06 shift, right, when we say shifter?
 07 A On the console.
 08 Q Yes. Moved it from park to neutral?
 09 A Right.
 10 Q All right. And the purpose of that
 11 would be to get it in a position where you could
 12 roll the car back?
 13 A Right.
 14 Q And in the process, you think that that
 15 could have bent the transmission linkage?
 16 A Yes.
 17 Q Do you know that will happen as a
 18 matter of fact, or are you just assuming that?
 19 A No, I don't know it for a fact.
 20 Q Okay. Is it possible to -- would it be
 21 possible to get that Corvette out of there
 22 without -- in that -- parked the way it was
 23 without getting the transmission into neutral?
 00047 { 9:37:25am}
 01 A They would have had to drag it out.
 02 Q Which would have left skid marks?
 03 A Probably.
 04 Q Now, assuming we've got it into neutral
 05 some way or another -- one way to get it into
 06 neutral would be if you had a key; right?
 07 A Yes.
 08 Q Okay. Because if you had a key, you'd
 09 just slip it in and turn it to the on position
 10 and wiggle the steering wheel and shift it into
 11 neutral; right?
 12 A If they had one that wouldn't start the
 13 car, it'd just turn the switch.
 14 Q Right. I guess if they had one that
 15 would start the car, they could just drive it
 16 away; right?
 17 A I would assume that's what they'd do.
 18 Q But if they -- what kind of key can be
 19 used to turn the car on to shift it from park to
 20 neutral without starting it?
 21 A It would have to be the same cuts on
 22 the key, the same blank. The same cuts on the

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23 key but it doesn't have the transponder chip.

00048 { 9:38:21am}

01 Q Okay. Are those readily available?

02 A No.

03 Q I mean, you'd have to plan a long time
04 in advance to do that, I guess?

05 A You would have to -- yes. You'd have
06 to have a key code on it and go get it cut
07 and...

08 Q All right. Now we've broken in,
09 somehow got it into neutral, shifted it into
10 neutral. Is it now able to roll? It's freed up
11 where we can roll it; is that right?

12 A Yes.

13 Q So then you would do what? Pull it --
14 pull it towards you?

15 A Yes.

16 Q Would you then pick it up and drag it
17 out of there from the --

18 A You would have already lifted it up.
19 Lift it up and drive off.

20 Q You'd already lift it up and drive
21 off. So you --

22 A If you've got it in neutral, you'd lift
23 it up and take off.

00049 { 9:39:26am}

01 Q So in this situation, you would be
02 pulling -- you would have lifted the front of
03 it; right?

04 A Yes. That's assuming we used a sling
05 truck.

06 Q We used a sling truck. We picked it up
07 from the front and we drug it out of there. So
08 the back end would be -- the back tires is what
09 would be making contact with the pavement?

10 A Yes.

11 Q And we would just drive it off like
12 that?

13 A Yes.

14 Q Is that right?

15 A Uh-huh.

16 Q Say yes for me.

17 A Yes.

18 Q There would not be a necessity, then,
19 to then -- to stop, lower it back down, and pick
20 it up from the rear and pull it off?

21 A It might be. It wouldn't look good
22 towing a Corvette like that. And it's possible
23 you'd damage the transmission.

00050 { 9:40:19am}

01 Q Why?

02 A Because the transmission is turning.
03 It's not made to be towed like that. If you
04 turn it around and get it the from the rear --
05 pick up the rear drive, then the transmission
06 doesn't have any -- it's not moving at all.

07 Q I understand that. And that's why I'm
08 asking you. On the way that you've just
09 described to me, I thought that we had picked up
10 the front of the vehicle.

11 A Yes.

12 Q And the back wheels were still being --
13 rolling on the pavement; right?

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14 A Right.
 15 Q And then I asked you if you would just
 16 simply drive it off like that, and I thought you
 17 told me that you would.
 18 A For a little while. It depends on how
 19 far they've got to go. If they have to go a
 20 long distance, it's possible to damage the
 21 transmission. It could lock up.
 22 Q You and I are together now. Okay. So
 23 it would be better if you're going to tow the
 00051 { 9:41:13am}
 01 Corvette to pick up the front -- to pick up the
 02 rear, right, as opposed to the front?
 03 A Yes.
 04 Q And that's because it's a rear wheel
 05 transmission?
 06 A Right.
 07 Q Okay. Now, is there anything about
 08 this vehicle that you know from looking at the
 09 materials that you've looked at that would help
 10 us determine whether this vehicle was picked up
 11 from the front or from the rear?
 12 A If you could have -- see what kind of
 13 damage there was to the front of the vehicle. I
 14 think it's made out of fiberglass. It might
 15 have done some significant damage to the front
 16 possibly. Or if there were possible J hook
 17 marks on the rear axle. On independent
 18 suspension, there's two little things that come
 19 out. It looks like there were some hook marks
 20 on the back of it.
 21 Q There were?
 22 A Possible. One of these were pointing
 23 out where there were some marks on each side.
 00052 { 9:42:05am}
 01 Q Okay. That's in Mr. Breznock's
 02 materials?
 03 A The one with all the pictures of the
 04 car in it, yes.
 05 Q Show me which ones you're talking
 06 about.
 07 MR. BURGE: I think they both have
 08 pictures of the car.
 09 MR. NEWMAN: They do.
 10 A It's kind of hard to tell with these
 11 pictures. Okay. I believe it's some kind of
 12 mark up here. This is basically where you'd
 13 hook the chain up to it.
 14 Q This is just so we'll know on the
 15 Record, SF1, page 243, SF1-243. Photograph
 16 number 9. And you're pointing to some --
 17 A I think there are some scratches all
 18 right here (indicating) where you would be
 19 hooking the chain up to.
 20 Q Have you seen the originals of this
 21 photograph?
 22 A No.
 23 Q Would that help you in determining
 00053 { 9:43:19am}
 01 that?
 02 A It's possible.
 03 Q But you're looking at -- 59 18
 04 Does that come from the inside of the

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05 wheel itself and attach to the axle?

06 A The frame. That doesn't have an axle.

07 Q It attaches to the frame. And that's

08 where you would hook if you were using a J

09 hook?

10 A Yes.

11 Q Can you look at this and tell me if

12 that's the front tire or the back tire?

13 A That's the rear tire. I'm pretty sure

14 it is.

15 Q How can you tell by looking at it? And

16 I'm sure you can. I just want to know.

17 A I think that's the gas tank right

18 there. I'm pretty sure. You can see where the

19 rod that goes in the -- powers the rear wheel.

20 I'm pretty sure that's it going in right there

21 (indicating).

22 Q So you would think that that's the --

23 you would think that's the rear wheel that we're

00054 { 9:44:10am}

01 looking at in that photograph?

02 A Yes.

03 Q Any other photographs in here that show

04 marks that would indicate that it was towed from

05 the rear?

06 A No.

07 Q Is there anything there that shows that

08 it was towed from the front?

09 A No.

10 Q Now, towing it from the rear would not

11 have been done in this situation, would it? I

12 mean to get it out of the parking lot?

13 A Right.

14 Q Because to get it out of the parking

15 lot, we had to pull it from the front?

16 A If it was backed in.

17 Q Well, that's what you told me you

18 assumed to start with; right?

19 A I think that's what I was told.

20 Q Okay. You were told by who? By

21 Mr. Burge?

22 A Yes.

23 Q So to tow it, then, from the rear is
00055 { 9:45:05am}

01 not something that would have happened in the

02 parking lot of the hotel; right?

03 A They could have. They might have moved

04 it just to a different location and turned it

05 around there.

06 Q Possible that they stopped in the

07 parking lot of the hotel, let it back down,

08 drove around to the other side, and then picked

09 it up from the rear as opposed to the front?

10 A It's possible, yes.

11 Q But in that situation, they still had

12 to pull it out from the parking space it was in

13 from using -- attaching to the front of the

14 vehicle?

15 A Yes.

16 Q Okay. Do you know of any physical

17 marks on the car that would show that it was

18 hooked from the front?

19 A None that I've seen.

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20 Q Okay. What would you see if it had
21 been hooked from the front?

22 A Just possibly these same marks that I
23 saw on the back or up under the front carriage.

00056 { 9:46:03am}

01 The front of the front bumper, there might have
02 been some cracks.

03 Q Okay. Would you hook to the same frame
04 members or the corresponding frame members on
05 the inside of the front wheels as you would to
06 the inside of the back wheels?

07 A Well, it's different from the front and
08 the back, but there are several places you can
09 hook to it. It's similar.

10 Q When you do that, would you damage the
11 bumper?

12 A If you used a sling truck, it probably
13 would.

14 Q Why is that?

15 A Because the lift -- that's where all
16 the weight is on those things. And a Corvette
17 is made of fiberglass. It's possible that it
18 might have cracked some of that fiberglass. If
19 they used a wheel lift truck there wouldn't have
20 been any damage.

21 Q All right. I'm going to get to that in
22 a minute. But if you picked it up from the
23 rear, you also have a situation where you could

00057 { 9:46:55am}

01 drag the front bumper on the ground; right?

02 A Yes.

03 Q And that could also damage the front
04 bumper?

05 A Yes.

06 Q Corvettes are slung low to the ground,
07 aren't they?

08 A Yes.

09 Q So one thing that you would experience
10 if you picked up from the rear is damage to the
11 front bumper?

12 A Yes.

13 Q So you've got a chance of damaging the
14 front bumper whether you're picking it up from
15 the rear or picking it up from the front?

16 A Yes.

17 Q Okay. And is the damage going to --
18 are you going to be able to distinguish between
19 the types of damage, you think?

20 A If it's rubbing on the ground, you
21 could probably tell if it's just a long -- how
22 long it's -- if it's been towed for a few miles
23 or something, you could probably tell it's been

00058 { 9:47:33am}

01 rubbed raw, rubbed on the ground.

02 Q All right. But damage in either
03 situation?

04 A I would think so, yes.

05 Q Okay. All right. Now, we have talked
06 about how you would get the car out whether it
07 was backed in or whether it was driven straight
08 in. Would the fact that there were two cars
09 parked on either side of this vehicle -- like,
10 you know, on each side -- would that make a

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11 difference in the ability to tow the vehicle
12 out?

13 A No.

14 Q What about if the front wheels were
15 locked in place and they were at an angle?

16 A That would be a problem. I heard in
17 here that the plate had been taken out of the
18 steering column, so the wheels didn't lock.
19 What I'd do if I have something like that and
20 the steering wheel doesn't lock, I'll secure it
21 with a seat belt, tie it around tight, and put
22 it straight -- put the wheels straight, then
23 secure the steering wheel.

00059 { 9:48:40am}

01 Q If they don't lock?

02 A Right.

03 Q What if they're locked in place?

04 A If it's locked straight, there's no
05 problem.

06 Q If they're locked at an angle and
07 you've got cars on either side?

08 A Then that's a problem.

09 Q In that situation, is there a way to
10 get it out without damaging the car on either
11 side?

12 A Well, we have some go jacks that you
13 can jack up that has rollers on each side and it
14 rolls in on each side of the tire. You jack it
15 up -- the front end -- and then you can maneuver
16 the front end to either -- you can roll the
17 front end.

18 Q You have go jacks on all of the
19 equipment that you have?

20 A No, we don't have any right now. We
21 used to.

22 Q Okay. If the wheels are not locked in
23 place with the steering column locked and there

00060 { 9:49:54am}

01 are still vehicles on each side of the parked
02 Corvette is that going to create -- are those
03 two vehicles going to create a problem for you
04 in pulling it out?

05 A If the steering wheel is not locked?

06 Q Yes, sir. Or if it's straight?

07 A Yes.

08 Q They are still going to create a
09 problem?

10 A Well, I'll have to secure that steering
11 wheel and tie it down and make sure it doesn't
12 go to either side.

13 Q Okay. Assuming that you've done that,
14 are you then able to pull it out without concern
15 about the vehicles on either side?

16 A Yes.

17 Q Because you know that when you pull it,
18 the car is going to come straight out?

19 A Yes.

20 Q And you'll tie -- what you would do in
21 that situation is actually tie the column in
22 some way?

23 A There are several ways. You can just

00061 { 9:50:47am}

01 get a long length of rope, wrap it around the

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02 steering wheel, and pull it out the -- well,
03 that window -- I guess the window was broke.
04 But normally what I would do is I'd pull the
05 seat all the way forward that has the part of
06 the seat belt that you click into rides forward
07 with the seat and then pull the seat all the way
08 up, wrap the rope around the steering wheel,
09 pull it down back down onto the --

10 Q Wrap the belt around the steering wheel
11 and the seat?

12 A On the bottom of the steering wheel and
13 buckle it up. Then pull the seat back and it
14 tightens it.

15 Q Okay.

16 A Or I've had other guys just sit in it
17 and hold it straight while I tow it out.

18 Q Sure. I understand that one. Now, if
19 the steering column is locked but the wheels are
20 straight do the cars on either side of you
21 create a problem in that situation?

22 A No.

23 Q Because in that situation, you're able
00062 { 9:51:57am}

01 to pull it straight back?

02 A They're locked straight -- that's the
03 way I want it -- so there's no problem.

04 Q And something in your report that says
05 it could be better for them to be locked in
06 place. Is that what you're talking about?

07 A Yes. I would rather it be locked
08 straight.

09 Q So if I want -- I mean, just as a
10 layman if I want to decrease the likelihood of a
11 tow truck taking my car, then I would angle my
12 wheels as far I could one way or another and
13 then lock it in place; right?

14 A Right.

15 Q That would complicate your life?

16 A Yes. If it's a front wheel drive,
17 you'd pull in straight. Rear wheel, you'd back
18 in to make it harder.

19 Q Okay. Now, what we had talked about up
20 to this point is the use of a sling truck. Is a
21 sling truck going to cover the kind that comes
22 up out of the bed or the kind that's already
23 positioned and stationary, sticking straight up?

00063 { 9:53:44am}

01 A Yes. It has the two black straps on
02 it.

03 Q And then -- but you told me that there
04 would be another type of the truck that you
05 could use in that situation?

06 A wheel lift.

07 Q wheel lift. What would be the
08 advantages or disadvantages of using a wheel --
09 is the wheel lift the flatbed?

10 A No.

11 Q The wheel lift is the one that has the
12 rods that come out, lock into the tires, and
13 then pick it up; right?

14 A Yes. Mostly for -- it's damage free
15 towing. You hook onto the wheels and strap it
16 onto the wheels. You don't touch the car in any

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17 way, just the tires.
 18 Q And that's the one that once you get it
 19 out to where you want it to go, do you then pick
 20 it up like you do with the sling lift or do you
 21 leave it on those rods?
 22 A No. You just lift it up and leave.
 23 Q So those must be awfully strong steel
 00064 { 9:54:38am}
 01 rods that go out underneath the car?
 02 A Yes.
 03 Q They can take the weight of a car, I
 04 guess?
 05 A Yes.
 06 Q Can they take the weight of a truck?
 07 A Yes.
 08 Q A big truck, like a three-quarter ton
 09 truck?
 10 A Yes.
 11 Q How far out do they protrude?
 12 A Just a little -- let's say this is the
 13 length of your tire, it probably comes out a
 14 little bit like that (indicating.) You know,
 15 they extend -- you've got them --
 16 Q They go all the way to the front tire,
 17 though; right?
 18 A Yes. Well, past it.
 19 Q Past the front tire?
 20 A Yes.
 21 Q So you're talking about over ten feet,
 22 then?
 23 A No. Well, I don't -- no.
 00065 { 9:55:17am}
 01 Q Just --
 02 A Just as wide as --
 03 THE REPORTER: Wait.
 04 A -- the truck is. Not much more.
 05 Q As wide --
 06 A Wide as the car you're towing.
 07 Q I'm talking about the length of them.
 08 A Oh, the length of the tow truck?
 09 Q No. The length of the rods that come
 10 out that attach to the tires?
 11 A That's a boom. It comes in and out.
 12 You can --
 13 Q Well, how far out does it go?
 14 A You can extend it all the way out. You
 15 mean the ones that actually attach to the tires?
 16 Q Yes, sir.
 17 A They're probably about that long
 18 (indicating). A couple of feet maybe.
 19 Q But how far out do they go from the --
 20 A A few inches.
 21 Q Okay. I guess I don't understand them,
 22 then. I think we're going to have to go through
 23 this again.
 00066 { 9:55:55am}
 01 A It's a boom that you can put up and
 02 down and it's like forks. Well, it would be
 03 coming out this way (indicating). And you would
 04 put these in. As you're coming in, these are
 05 flat up against the other one. And when you
 06 pull in, you put -- the front ones will go up
 07 against the tires like that (indicating). And

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08 then as soon as you're rested up against the
09 tires, the ones in the back will fold back up
10 around the tire. Well, actually, it will come
11 out, come out of --

12 Q But you're not going around all four
13 tires, then?

14 A No. Just the front two.

15 Q Either the front two or the back two
16 depending on how you approach the vehicle?

17 A Yes.

18 Q So how does that -- then you don't need
19 to raise it. You just slightly raise it off the
20 ground at that point?

21 A Yeah.

22 Q All right. I see. And why is that --
23 why does that give you a towing situation where

00067 { 9:56:54am}

01 you're going to create less damage than you do
02 with a sling truck?

03 A You're just towing it from the tires.
04 The contact points is all tire.

05 Q So you're not going to have your cables
06 going under a bumper rubbing against --

07 A No. You're not going to touch the car
08 in any way.

09 Q Not going to rub against a frame member
10 or anything?

11 A Right.

12 Q All right. The reason I was asking
13 those questions, Mr. O'Shaughnessy, is I had in
14 my mind the impression that these -- the rods
15 that were coming out, the booms, were going all
16 the way past the rear tires to the front tires
17 and then picking the whole car up at once.

18 A No.

19 Q But that's not what we're talking
20 about?

21 A No. Just one end or the other.

22 Q And just enough to get that end up off
23 the ground where you can, then, tow it out of

00068 { 9:57:46am}

01 there?

02 A Yes.

03 Q Now, in this situation, assuming that
04 the car -- that the vehicle was pulled in where
05 the -- front ways with the front against the
06 curb, then you would have simply picked up those
07 back tires and pulled it out and that would have
08 created a little problem for that type of truck;
09 right?

10 A No, it wouldn't have created any
11 problem.

12 Q How about if it were the other way? If
13 it were backed in, would you be able to -- you'd
14 still have the same problems --

15 A Yes.

16 Q -- of getting the car into neutral or
17 some way freeing up the rear wheel drive?

18 A Yes. It would be just the same thing,
19 except you're just towing this one from the
20 tires instead of going up under the car and
21 touching the front or rear bumper.

22 Q And both of those in this situation

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23 would fit into this area?

00069 { 9:58:42am}

01 A Yes.

02 Q All right. Let's go to the third
03 situation, the flatbed truck. Would it fit into
04 situation?

05 A Yes.

06 Q It would?

07 A I believe from where I saw the car was
08 parked there was plenty of room for it to --
09 pull it up on there.10 Q Now, if you did that, you would be
11 pulling the car from the pavement up onto the
12 flatbed itself. In that situation, would you go
13 through the same steps of putting it into
14 neutral?15 A If you wanted to not leave any skid
16 marks or sounds of the tires squealing on the
17 ground.18 Q But the winch is strong enough to pull
19 it up there with the wheels still locked in
20 place?

21 A Yes.

22 Q It'd just skid and bump?

23 A Yes.

00070 { 9:59:27am}

01 Q Okay. Are you a mechanic, auto
02 mechanic?

03 A No.

04 Q Have you ever worked as one?

05 A No.

06 Q Have you ever worked in a transmission
07 shop?

08 A No.

09 Q When you tow a car, whether you tow it
10 from the rear or the front or whether -- no
11 matter what type of vehicle it is, where do you
12 take it?

13 A To my lot.

14 Q You've got a lot?

15 A Yes.

16 Q Okay. And when you get it to the lot,
17 where do you put it?18 A Up against a fence or one of our
19 parking spots.

20 Q Wherever there's a place; right?

21 A Yes.

22 Q Does there come a time sometimes where
23 you have to get that car out in order to get to

00071 {10:00:39am}

01 another car?

02 A No, our lot's big enough where we don't
03 have to do that. Well, every once in a while
04 you might have one that doesn't run and it's
05 blocked in.06 Q Where you'd have to move it in order to
07 get to the one you're trying to get to?

08 A Yes.

09 Q How do the financing companies get the
10 vehicles from your lot?11 A They send a transport truck or we might
12 take them to the auto auction.

13 Q Okay. At that time, has a key been

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14 provided or are we still without keys?

15 A No. We have a locksmith that comes in
16 and makes a key to the vehicle if we don't have
17 one.

18 Q And what about if they're the kind that
19 require some type of transponder or pellet
20 reader or something like that?

21 A He can make one.

22 Q The locksmith can?

23 A Yes.

00072 {10:01:23am}

01 Q How does he know how to make that
02 vehicle with the correct pellet reader?

03 A Well, he's got a machine that he can
04 hook up to the computer in the car and it has a
05 readout and it tells him -- I think there's like
06 ten different -- like one through ten, all the
07 different -- all the cars. And it tells him you
08 need number two transponder to program. Then he
09 puts it in the machine and it will program it to
10 number two.

11 Q No kidding. So then he can actually
12 make a key regardless of the safety features
13 that the vehicle has and the anti-theft
14 features? He can come, attach his machine up to
15 it, and create a key that will then work in that
16 vehicle just like one would from the factory?

17 A Yes.

18 Q So after they get to your lot, that's
19 when keys are made for them?

20 A If we don't have one, yes.

21 Q You have them sometimes?

22 A Yeah, when they give me a key.

23 Q Okay. When they give you a key. And

00073 {10:02:24am}

01 then is it -- that key that the locksmith uses
02 is the one that's used to drive the car to
03 wherever the financing company wants it?

04 A Yes.

05 Q Do you ever get involved in buying and
06 selling the vehicles that are sold at auction?

07 A Not at the auction, no.

08 Q Do you ever get involved in buying them
09 at any point?

10 A We sell -- some of our credit unions,
11 we sell their vehicles for them.

12 Q Oh, you do?

13 A Yes.

14 Q Right from your lot?

15 A Yes.

16 Q And do you handle the paperwork on
17 those?

18 A No, I don't. My partner does most of
19 that.

20 Q That's some of the smaller credit
21 unions?

22 A Yes.

23 Q Some of the smaller financing

00074 {10:03:10am}

01 companies?

02 A Yes.

03 Q Can you get a pretty good deal on them?

04 A Some. Sometimes we take bids on them.

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05 You know, the highest bid will take it. But the
06 credit union has to approve that, of course.

07 Q Are they mainly bought by dealers or
08 bought by individuals?

09 A Some both. Usually by just
10 individuals.

11 Q Okay. What have you looked at to be
12 able to determine that there was enough room in
13 that parking lot to move the vehicles?

14 A The pictures.

15 Q Okay. And you're talking about -- I'm
16 going to hold these up for right now. We're
17 talking about these photos that I'm holding in
18 my hand?

19 A Yes.

20 Q Or are we talking about the aerial
21 photo that I'm holding in my hand?

22 A The ones in your hand.

23 Q Did the aerial photo help you any?

00075 {10:05:26am}

01 A I'm not sure.

02 Q I'm showing you what's been marked as
03 Defendant's Exhibit 3 with the caveat that
04 Mr. Burge has told me that he may have given a
05 different perspective of that photo to
06 Mr. O'Shaughnessy.

07 A Well, yes, this one, also.

08 MR. BURGE: It would have a different
09 date on it, too.

10 A This picture, also.

11 Q So we're talking about Exhibit 3 as
12 well as the photos?

13 A Yes. I've towed some cars out of half
14 that room.

15 Q Okay. Do you know how much room that
16 is, or are you just eyeballing it from --

17 A It just looks like a standard parking
18 lot. And there was no parking in front of it.
19 There was just that one single up against the
20 curb.

21 Q Okay. One of these photos that
22 Mr. Burge has supplied me with shows a tape
23 measure from the end of the line -- the parking

00076 {10:06:19am}

01 line -- over to where the plants are in this
02 little planting area on the other side. Do you
03 know how far that is?

04 A I think it was 25 feet from the end of
05 the line to that curb.

06 MR. BURGE: Yeah. There is a --

07 MR. NEWMAN: Is there another photo
08 that would show us --

09 MR. BURGE: Well, that's 25 feet to the
10 end of this one. And I went -- and the next one
11 will have -- it should show -- the very next one
12 shows the measure.

13 MR. NEWMAN: Is that it?

14 MR. BURGE: That's going from side to
15 side.

16 MR. NEWMAN: Is this it, Tucker?

17 MR. BURGE: Yeah. And that's a
18 different one because that one is going all the
19 way to the curb from this one by the manhole

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20 cover. And it should be -- they're all right at
21 300, which is 25 feet. But some are like 296.

22 Q Let me show you two of these
23 photographs. One of them shows a tape measure

00077 {10:07:37am}

01 that goes out to close to 300 inches, it looks
02 like, and the other one shows a tape measure
03 stretched from the end of the parking line to
04 this particular point. And that -- 12 goes into
05 300 about 25 times, I guess.

06 A Do we know which spot it was in?

07 Q I think we do, yeah. I think it was
08 in -- well, we know approximately which spot it
09 was in. And it was in a spot, as I recall, that
10 would be across from this planted area.

11 MR. BURGE: Object to the form. I
12 don't remember. So whether that accurately
13 states the evidence --

14 Q well, let me just ask you this.
15 Assuming that you've got that 25 feet in there
16 is that enough room for the sling truck?

17 A Yes, I would think so. Do we know if
18 there's cars on either side of it?

19 Q There are cars on either side.

20 A Both sides?

21 Q Yes, sir.

22 A I think you can get it out.

23 Q You still think you can get it out?

00078 {10:08:52am}

01 A Yes.

02 Q would it be hard?

03 A It depends on how long your truck is
04 that you're getting in there.

05 Q well, let's talk about your sling truck
06 that's set up in a way to minimize or keep
07 people from knowing that it's a tow truck. How
08 long is it?

09 A I've never measured it. It's one of
10 the longest ones there are. Sometimes that's a
11 problem, but I've seen some that are almost half
12 that size.

13 Q Okay. But you're going to have to have
14 one that's -- let me go back. When you've got
15 the vehicles on either side isn't it true that
16 you're going to have to position the towing
17 truck -- no matter what type of towing truck it
18 is -- so that it is directly lined up with the
19 cars that you're going to pull out?

20 A It doesn't have to be exactly, but
21 that's best.

22 Q More chances of damaging the cars on
23 either side?

00079 {10:09:51am}

01 A Yes.

02 Q Okay. So, again, just looking at these
03 photographs, your opinion is that there was
04 enough space in there to do that?

05 A Yes.

06 Q what about if there's a vehicle parked
07 on the other side where that planted area was,
08 if there's a vehicle parked there?

09 A Up against the curb?

10 Q Yes, sir.

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11 A That would have probably made it a lot
12 harder.

13 Q Does the width of the parking area --
14 and I'll show you one of these photographs
15 that's got -- somebody measured -- I think
16 Mr. Burge measured the width there. Does that
17 make a difference when you're trying to pull the
18 vehicle out?

19 A Well, the more spaced out the cars are
20 parked next to it, the better. The further the
21 better.

22 Q In order not to damage those cars?

23 A Yes.

00080 {10:11:07am}

01 Q But you yourself, Mr. O'Shaughnessy,
02 have never been, as I understand it, to the
03 Country Inn Suites where these photographs were
04 taken?

05 A No.

06 Q And you don't know whether these
07 photographs represent what the parking lot
08 looked like on the day that the Corvette was
09 missing?

10 A Right.

11 Q Is there anything about a Corvette
12 that's different or harder -- let's go back. Is
13 there anything about a Corvette that makes it
14 more difficult to tow than another type of
15 vehicle?

16 A Just maybe some towing damage.

17 Q Because it's low to the ground?

18 A Yes. And it's made of fiberglass.

19 Q Okay. When you tow vehicles from
20 parking lots are you aware of where surveillance
21 cameras are?

22 A No.

23 Q Don't worry about that?

00081 {10:12:31am}

01 A No. Well, it's in the back of your
02 mind, but it doesn't matter. You've got to go
03 in there anyway.

04 Q I mean, according to the financing
05 companies, you're supposed to be legal; right?

06 A Yes. I am legal, yes.

07 Q Are they the ones that tell you that
08 you have the authority to go and do that, or do
09 you do your own independent research?

10 A No. They give us -- sometimes they'll
11 give us an address where they live and sometimes
12 a place of employment.

13 Q Right. But you don't go back and look
14 at the documents and the payment history and all
15 that to determine whether or not you've got a
16 right to pick it up; right?

17 A No. Once they send us the account we
18 assume it's okay to pick up.

19 Q Okay.

20 MR. NEWMAN: Tucker, what's that?

21 MR. BURGE: That's a camera that is on
22 the breezeway.

23 MR. NEWMAN: Okay. Thank you. Just

00082 {10:14:17am}

01 sticking out. I see how it's positioned now.

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02 Thank you.

03 Is the only difference in the piles
04 that they came out of different cameras?

05 MR. BURGE: That should be the only
06 difference. Now, they should be separated in
07 that manner. Now, whether they are, I guess
08 we'll have to look at the legend to see.

09 MR. NEWMAN: I'm going to mark --

10 MR. BURGE: One's marked 0A through 25A
11 where 0A begins with a picture looking from the
12 breezeway that shows a green Explorer or
13 something and 25A is a white Expedition parked
14 along the same side where Mr. Long's was. And
15 the other set --

16 MR. NEWMAN: I think it also goes 0A
17 through 25A. There ought to be some other
18 identification.

19 Tucker, look at the sequence on them.

20 It looks like one pile starts with 874. It
21 looks like one pile starts on the back with
22 number 874 and goes through 897. And then the
23 next bunch starts with 898 and goes through

00083 {10:17:25am}

01 923. I guess that's how we can tell them apart.

02 MR. BURGE: Well, one set is going to
03 have 1197 as the identifying mark on the back
04 and the other one is going to have 1198.

05 MR. NEWMAN: Right. I agree with that,
06 too. And that's also consistent with what I
07 just told you.

08 MR. BURGE: And here I have a copy of
09 the detail thing if you need those.

10 MR. NEWMAN: I'm going to mark the ones
11 that have 1197 and the numbers that start with
12 874, I think, but have 1197 on the back as
13 Defendant's Exhibit Number 9. I'm going to mark
14 it on the back of photograph 25A.

15
16 (Whereupon, Defendant's Exhibit
17 Number 9 was marked for identification
18 and copy of same is attached hereto.)

19

20 MR. NEWMAN: And then I'm going to mark
21 the photographs that are 1198 on the back and
22 I'll mark those as Exhibit 10. I'm going to
23 mark those on the back of photograph number

00084 {10:18:47am}

01 24A. And we're going to take a short break.

02

03 (Whereupon, Defendant's Exhibit
04 Number 10 was marked for identification
05 and copy of same is attached hereto.)

06

07 (Whereupon, a brief recess was had in
08 the proceeding.)

09

10 BY MR. NEWMAN:

11 Q Mr. O'Shaughnessy, as I understand it,
12 you've used the photographs which we've marked
13 as Defendant's Exhibit 9 and 10 and the aerial
14 photo which you have that is similar to the
15 Defendant's Exhibit 3 to come up with your
16 opinion -- as the basis of your opinion that it

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17 would be feasible to tow the Corvette from the
18 location that it was in?

19 A Yes.

20 Q And from what source did you obtain the
21 information that the vehicle was parked at the
22 Country Inn Suites?

23 A From Tucker.

00085 {10:26:13am}

01 Q Okay. And from what source did you
02 obtain the information that one of the parking
03 places that are indicated on the photographs was
04 the parking place where the Corvette was?

05 A The same.

06 Q Mr. Burge?

07 A Yes.

08 Q And from what source did you obtain the
09 information that the vehicle, the Corvette, was
10 backed in?

11 A Tucker.

12 Q From what source did you obtain the
13 information that the linkage on the transmission
14 was bent?

15 A The same.

16 Q Mr. Burge?

17 A Yes.

18 Q And from what source did you obtain --
19 did you obtain all your information from
20 Mr. Burge?

21 A Yes.

22 Q None of it from the documents that you
23 reviewed; correct?

00086 {10:26:55am}

01 A Yes. There were pictures in there that
02 said it was -- the linkage was bent in there,
03 too.

04 Q Okay. So what else did you obtain from
05 the documents other than the photographs and the
06 place in the -- where it said the linkage was
07 bent?

08 A That's about all.

09 Q Everything else you would have obtained
10 from Mr. Burge?

11 A Yes.

12 Q And I think I've gone over this. But
13 you've never been to the Country Inn Suites and
14 you've never seen this Corvette; right?

15 A Right.

16 Q Where did you get the information that
17 the brake fluid was drained from the vehicle?

18 A Mr. Burge. And I believe it's
19 somewhere in these documents.

20 Q How about the fact that the master
21 cylinder may have been inoperative?

22 A From the document.

23 Q Right. Do you remember which one that
00087 {10:27:58am}

01 was?

02 A No. This is -- you want me to go
03 through all of them?

04 Q We might be able to find it pretty
05 quick.

06 MR. BURGE: which one are we looking
07 for?

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08 MR. NEWMAN: The brake fluid.
09 MR. BURGE: In the first one. And it's
10 in the -- it's in that auto claim thing, too.
11 Q Is there any reference to the master
12 cylinder -- that's the one I want you to point
13 me to -- any reference in any of these documents
14 to the master cylinder?
15 A I think it said the master cylinder was
16 full, didn't it?
17 MR. BURGE: Huh-uh. It says it's
18 empty. It's right there.
19 MR. NEWMAN: Okay. Thanks.
20 MR. BURGE: It may be in Smith's, one
21 of his things, because he quoted out of this.
22 MR. NEWMAN: But he didn't look at
23 that. That's what I'm asking, what he looked
00088 {10:29:43am}
01 at, not what it may be in.
02 Q In towing a vehicle is there any reason
03 to drain the master cylinder or the brake
04 reservoir?
05 A No.
06 Q All right. Mr. O'Shaughnessy, I want
07 you to look now, if you would, please, at
08 Defendant's Exhibit 2 to your deposition. And
09 this is the report that was required by the
10 Court in this case. And it contained your
11 opinions. And it's signed by you; correct?
12 A Yes.
13 Q Do you agree with me that the only
14 opinion that you have is that it was feasible
15 for that vehicle to be towed from the place that
16 it was?
17 A Yes.
18 Q You do not have the opinion that it was
19 necessarily towed, do you?
20 A No.
21 Q Okay. The reason that I ask you, I
22 want you to look at the top of page 4 under
23 opinion 2. And it says, Martin Long's 2000
00089 {10:31:10am}
01 Chevrolet Corvette was stolen via towing. Is
02 it -- am I correct that that is not your
03 opinion?
04 A Well, I don't know for sure that's how
05 it happened, but I'm saying it's possible that
06 it was towed.
07 Q That's not what this says, though.
08 This says that is how it happened. And I'm
09 saying I know that you're saying it was possible
10 to tow it, but you're not saying that it was
11 towed, are you?
12 A No.
13 Q Okay. So if number 2 says that it is
14 your opinion that it was stolen by towing that
15 would be wrong; correct?
16 A Well, I guess that's what I am saying,
17 that it was stolen -- taken by towing.
18 Q By the way, who typed this up?
19 A I don't know. It wasn't me.
20 Q Mr. Burge did, didn't he?
21 A Yes.
22 Q So it's in his words; correct?

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23 A Yes.
00090 {10:32:08am}
01 Q So you are not saying -- I mean, it's
02 your opinion.
03 A Yes.
04 Q And so is it your opinion that it's
05 possible to tow it and it's your opinion that
06 it's possible to put a key in it and drive it
07 away; right?
08 A Yes.
09 Q So you don't know and you don't have an
10 opinion as to whether it was towed or whether it
11 was driven away from that parking lot, do you?
12 A Right.
13 Q But you do have an opinion clearly that
14 it's possible to tow it away from the parking
15 lot?
16 A Yes.
17
18 (Whereupon, Defendant's Exhibit
19 Number 8 was marked for identification
20 and copy of same is attached hereto.)
21
22 Q Okay. And that's fine. That's the
23 reason we're here is to get that kind of stuff
00091 {10:32:42am}
01 straight.
02 On page 2 where it says factual
03 background underneath that if you'll read with
04 me it says, from my review of the materials
05 listed above, I learned the following facts that
06 are relevant to my opinions in this case, and
07 then a number of facts are listed. Are those
08 facts that Mr. Burge put down on this report?
09 A Yes, sir.
10 Q You didn't tell him what to put down,
11 did you?
12 A No.
13 Q And under the opinions, I know that
14 we've gone over the fact that it is your opinion
15 that it is feasible to tow the 2000 Chevrolet
16 Corvette from that particular place, but the way
17 that this is worded, is it Mr. Burge that worded
18 it this way?
19 A Yes.
20 Q And then it's not your opinion that it
21 was necessarily stolen by towing; correct?
22 A Right.
23 Q A key could have been used just like it
00092 {10:34:31am}
01 could have been a tow truck; right?
02 A That's possible, yes.
03 Q Now, you are being paid \$100 per hour;
04 correct?
05 A Yes.
06 Q And you've never testified as an expert
07 witness in the past?
08 A No.
09 Q Okay. Look at opinion number 3 for me,
10 please, sir. I'm sorry. Factual background,
11 number 3. My fault. Page 2, factual
12 background, number 3. An examination of the
13 undercarriage of the car revealed scratches and

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14 contact marks in the area where J hooks and/or
15 chains would be used to tow the car. We're
16 talking about the J hooks and/or chain marks in
17 the rear of the vehicle; correct?

18 A Yes.

19 Q Okay. with respect to number 5, which
20 says the car's universal theft deterrent system
21 did not work as intended when tested. The
22 system was able to be armed but failed to
23 operate when the system was violated by opening

00093 {10:36:25am}

01 the door or opening the hood, et cetera -- with
02 respect to that factual background, was it your
03 understanding that that was a finding that it
04 never worked or it did not work at the time that
05 it was tested?

06 A It didn't work when it was tested.

07 Q Do you know of anyone who ever did an
08 inspection to see if the linkage was, indeed,
09 bent?

10 A I believe it was.

11 Q Somebody actually saw it was bent or
12 somebody said there was a likelihood it was
13 bent?

14 A I'm not sure. I'd have to look at it
15 again where it said that.

16 Q Would you do that, please, sir?

17 A Where is the...

18 MR. BURGE: Exhibit 7.

19 THE WITNESS: This one?

20 MR. BURGE: Uh-huh. Where it says 232
21 at the bottom. One of these little numbers says
22 232. There you go.

23 A It says a likelihood the linkage was

00094 {10:37:37am}

01 bent.

02 Q So as far as you know, there was never
03 an inspection of the linkage?

04 A Right.

05 Q Do you disagree in any way with
06 Mr. Breznock's opinion that the vehicle was not
07 operated without a key that would have the
08 correct cut and correct pellet?

09 A No.

10 Q You've never worked in law enforcement
11 in any way?

12 A No.

13 Q By the way, when you tow the vehicles,
14 do you report to the police that the vehicle has
15 been towed?

16 A Yes.

17 Q Okay. Are you required to do that, or
18 is that just something you do because -- as a
19 courtesy?

20 A It's required.

21 Q Who requires it?

22 A Our finance companies and our own
23 office.

00095 {10:39:19am}

01 Q Okay. But it's not required by the
02 police, to your knowledge?

03 A It might be. It might be, yes.

04 Q But do you do it anyway?

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05 A Yes.
06 Q And do you know -- I guess which police
07 department would depend on what jurisdiction
08 you're in?
09 A Yes.
10 Q Let's get back to this Notice of
11 Deposition that we sent you. We've talked about
12 the things that you looked at and we've gone
13 over your background, and if I saw your entire
14 file, it would contain the information that
15 we've looked at today; correct?
16 A Uh-huh.
17 Q Except for we might have a different
18 perspective on Number 3; correct? Maybe a
19 different angle, a different size of the photo.
20 Apparently Mr. Burge says that the way this
21 software works is you can position what you're
22 looking at and so you may have a little
23 different position on Number 3, but generally
00096 {10:41:22am}
01 it's the same; right?
02 A Yes.
03 Q Did you make any notes when you
04 reviewed the material or at any time?
05 A No.
06 Q Have you corresponded with Mr. Burge in
07 any way?
08 A Just when we've met.
09 Q How about by e-mails? Did y'all send
10 e-mails back and forth?
11 A No.
12 Q How did you get a copy of the facts and
13 the opinion he wrote for you?
14 A He gave me one.
15 Q When you met?
16 A Yes.
17 Q Was that here at his office?
18 A No. He came to my office.
19 Q How many times have you met with
20 Mr. Burge?
21 THE WITNESS: Just that once, wasn't
22 it, or --
23 MR. BURGE: Twice.
00097 {10:42:05am}
01 A It was twice. Yes, twice.
02 Q Where were those meetings?
03 A One at my office and one in Tuscaloosa,
04 I believe it was.
05 Q Okay. What was the meeting in
06 Tuscaloosa about?
07 A He just wanted me to sign one of these
08 documents here.
09 Q Why did you meet in Tuscaloosa?
10 A That's where -- that's where I was.
11 Q So he went down there to find you?
12 A Yes.
13 Q How big an area is it that you tow cars
14 in?
15 A About from Clanton on up the whole
16 state. About half the state.
17 Q Okay. And are y'all busy every day?
18 A Yes.
19 Q You didn't e-mail things back and forth

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20 to Mr. Burge?
21 A No.
22 Q Okay. You've never written any
23 articles, given any speeches about towing
00098 {10:43:00am}
01 vehicles or anything like that?
02 A No.
03 Q This is the first time you've ever
04 testified as an expert; correct?
05 A Yes.
06 Q Have you ever had your deposition taken
07 before like we're doing now?
08 A No.
09 Q Never been in a lawsuit of any kind?
10 A Yes.
11 Q What kind of lawsuit was that?
12 A I wasn't in a -- I guess just when I
13 got in trouble 20, 30 years ago.
14 Q Other than that?
15 A No.
16 MR. NEWMAN: That's all I have.
17 EXAMINATION
18 BY MR. BURGE:
19 Q Mr. O'Shaughnessy, this report that is
20 Exhibit Number 8, does that accurately reflect
21 your qualifications and experience and the
22 factual background that we went over?
23 A Yes.
00099 {10:44:12am}
01 Q And in terms of the materials reviewed,
02 in addition to the reports from Transportation
03 Technology, the Auto Claim Committee Report, and
04 the aerial photograph of the hotel parking lot,
05 have you now seen the photographs contained in 9
06 and 10 that I took for you?
07 A Yes.
08 Q Based on this information, was it
09 feasible, in your judgment, to have towed that
10 Corvette out of that parking lot?
11 A Yes.
12 Q In terms of the room needed, was there
13 enough room?
14 A Yes.
15 Q Does it matter to you whether that car
16 was backed in or pulled out straight in terms of
17 the feasibility of getting it out of this
18 parking lot?
19 A No.
20 Q Is it sometimes necessary to get inside
21 a car in order to tow it out?
22 A Yes.
23 Q And was that to get it from park to
00100 {10:45:11am}
01 neutral as you mentioned?
02 A Yes. Or to secure the steering wheel.
03 Q And under Exhibit 7 at page 230, did
04 you learn that the steering wheel did not lock
05 when the car was turned off?
06 A Yes.
07 Q In terms of towing it, is that a good
08 fact or a back fact?
09 A Well, if it's locked in the -- where
10 the wheels are turned all the way, that's bad,

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11 but if it's locked straight, that's good.
12 Q And in this case, it didn't lock either
13 way. what does that mean?
14 A That would be better. Then you
15 straighten the wheel and make it straight and
16 then secure it and tow it out that way.
17 Q Securing it would be done from the
18 inside with the seat belt is how you'd do that?
19 A Yes. Or a rope.
20 Q From time to time, have you taken --
21 had to take cars that were backed in and in park
22 and with the wheels turned to the side and
23 locked and across from a planter?

00101 {10:46:28am}

01 A Yes.
02 Q Is that the worst case scenario for a
03 Corvette, taking a Corvette?
04 A If I've got enough room it's -- yes.
05 Q How long is it going to take us to do
06 that?
07 A If I'm by myself, it's going --
08 probably five or ten minutes. But if I'm
09 coordinated with somebody else, it would be
10 probably under -- less than five, I would say.
11 Q Have you had to force cars'
12 transmissions from park to neutral in your job?
13 A Yes.
14 Q How many times have you had to do that?
15 A A hundred.
16 Q Is that your basis for believing --
17 that experience your basis for believing that a
18 Corvette could be forced from parked into
19 neutral?
20 A Yes.
21 Q Have you forced other General Motors
22 products from park to neutral?
23 A They're not going to hear about this,

00102 {10:47:19am}

01 are they? Yes.
02 Q And what sort of force are we talking
03 about that we're exerting to get the car from
04 park to neutral?
05 A Each of them are different, but it
06 probably -- might be pretty difficult.
07 Q And your familiarity with the force on
08 a transmission does that play any part in your
09 opinion that the bent linkage that's reflected
10 in Mr. Breznock's report could be related to
11 that?

12 A Yes.
13 MR. NEWMAN: Object to the form of the
14 question because he said it's a likelihood of
15 bent linkage. There's no inspection. He's
16 testified that he doesn't know about
17 transmissions and he's not a mechanic. I don't
18 think he knows the effect and the amount of
19 force that would be required to do that, so we
20 make the objection on those grounds.

21 MR. BURGE: We're in federal court. We
22 can rely on the facts made known through others
23 even if not admissible.

00103 {10:48:27am}

01 Q And you did have Exhibit 7 that we went

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02 over before you formed your opinions; true?

03 A Yes.

04 Q And at page 232 of Exhibit 7, did
05 Mr. Breznock note anything about the vehicle's
06 transmission being difficult to move the shift
07 from park?

08 A Yes.

09 Q And what did he indicate that that
10 indicated?

11 A That the linkage was bent.

12 Q Do you agree or disagree with that?

13 A Yes, I would agree with that.

14 Q Do you know whether or not there was
15 any difficulty in moving the transmission from
16 park into gear before it was taken?

17 A No.

18 MR. NEWMAN: Object to the form of the
19 question.

20 Q Would there be any need to force a
21 transmission from park into neutral if one had
22 the key?

23 A No.

00104 {10:49:46am}

01 Q Would there be any risk of damaging the
02 transmission linkage by shifting a car from park
03 into neutral with the key?

04 A No.

05 Q Have you ever had to enter a car to
06 secure the steering wheel or to get it from park
07 into neutral and had the alarm begin to sound?

08 A Yes.

09 Q Have you towed cars with the alarm
10 sounding?

11 A Yes.

12 Q When we looked at Exhibit -- what is
13 now Exhibit 7 at page 231, did you have an
14 opportunity to review any testing performed by
15 Transportation Technology of the alarm system
16 for State Farm before it made its decision in
17 this case?

18 A Yes.

19 Q And what happened when he tested it
20 based on that report?

21 A It didn't work.

22 Q Does the absence of skid marks mean
23 that a car was not towed?

00105 {10:51:05am}

01 A No.

02 Q Is it fair to suggest that?

03 A Yes.

04 Q That if you don't have skid marks that
05 it wasn't towed?

06 A No.

07 MR. NEWMAN: Move to strike.

08 A It could have been towed. It doesn't
09 mean anything.

10 Q You can tow a car without leaving any
11 skid marks?

12 A Yes.

13 Q You mentioned that there have been
14 occasions when you've changed the towing
15 position from towing it from the rear to towing
16 it from the front, and you've mentioned that

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17 that related to the transmission?

18 A Yes.

19 Q Would you explain that to me?

20 A You can't -- you don't want to damage
21 the transmission by towing it -- by having it
22 turning while you're on the drive axle. It
23 would damage the transmission.

00106 {10:51:53am}

01 Q What are go jacks?

02 A You can -- they have rollers -- rollers
03 that are on wheels that you can place up under
04 the tires and jack that end up and maneuver that
05 end and push it -- maneuver it to wherever you
06 want to go.

07 Q Have you ever used go jacks to push a
08 car out of a parking space before towing it
09 away?

10 A Yes.

11 Q Would that have been feasible here?

12 A Yes.

13 Q Have you ever forced a car's
14 transmission from park into neutral, let off the
15 emergency brake, and just pushed it out of a
16 parking space?

17 A Yes.

18 Q And you mentioned that you use a
19 locksmith who can make keys even with pellet
20 readers?

21 A Yes.

22 Q They come to your lot and do that?

23 A Yes.

00107 {10:52:51am}

01 Q They don't have to go back to their
02 shop to make the key. They can do it right
03 there on site?

04 A Right. They have a van or -- a big van
05 and they have everything they need right there.

06 Q How long does it take them to make the
07 key?

08 A Well, depends on how good they are.
09 Probably -- well, like on a Ford, they have to
10 go through -- it goes through a sequence and it
11 takes about like a half hour for them to get the
12 right code to come up. So probably a half hour
13 for some; some a lot quicker.

14 Q Is it important for the brakes to be
15 working on a car when you're towing it?

16 A No.

17 Q Is it important to have tires on a car
18 when you're towing it?

19 A Yes.

20 Q If it's been suggested by a State Farm
21 claims supervisor that the visibility into this
22 lot diminished the chance of having it towed --
23 have you looked at the photographs?

00108 {10:54:13am}

01 A Yes.

02 Q Do you agree with that?

03 A No.

04 Q Why not?

05 A You could see it from the road. Was
06 that the interstate we were looking at there?

07 Q (Counsel nods head.)

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08 A Yes.
09 Q If that has been suggested by State
10 Farm's claims personnel that they ruled out
11 towing because there were no skid marks, would
12 you agree with that?
13 A No.
14 Q Having looked at the Transportation
15 Technology report and the claim committee report
16 and the photographs can towing be ruled out?
17 A No.
18 Q If State Farm says they did rule out
19 towing, do you agree?
20 A No.
21 Q Have you seen anything in these
22 documents which reflects that they attempted to
23 rule out towing --
00109 {10:55:25am}
01 MR. NEWMAN: Object to the form of the
02 question.
03 Q -- as the method by which this was
04 taken out of the parking lot
05 MR. NEWMAN: Same objection.
06 Q You can answer.
07 A What's the question again?
08 Q Whether you've seen anything in any
09 documents reflecting any effort by State Farm to
10 rule out towing.
11 MR. NEWMAN: Same objection.
12 A I think they're trying to, yes.
13 Q By taking your deposition?
14 A Yes.
15 MR. NEWMAN: Same.
16 Q But have you seen anything in the
17 documents which says they tried to rule it out?
18 MR. NEWMAN: Same objection.
19 A Yes.
20 Q What have you seen in that regard?
21 A They're saying that they have -- it
22 wasn't possible to remove it without a key.
23 Q And do you agree with that?
00110 {10:56:11am}
01 A No.
02 Q And have you been removing cars without
03 a key for sometime?
04 A Yes.
05 Q How long?
06 A 18 years.
07 MR. BURGE: Thank you.
08 FURTHER EXAMINATION
09 BY MR. NEWMAN:
10 Q Just a few things to follow up,
11 Mr. O'Shaughnessy.
12 Do we agree that in order to tow the
13 vehicle from the parking lot where it was at the
14 Country Inn Suites it would have been necessary
15 to move the shift lever from park to neutral?
16 A Yes. If it was backed in, yes.
17 Q All right. And then how was the
18 vehicle found? In what gear was it found when
19 it was eventually found?
20 A I don't know.
21 Q Okay. And what gear was it in when it
22 was inspected at the yard?

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23 A I don't know.

00111 {10:57:07am}

01 Q Okay. And when the tow truck came to
02 take it from where it was found back to the
03 yard, did it tow it from the rear or from the
04 front?

05 A I have no idea.

06 Q Okay. When that happened, did they
07 force it from park to neutral?

08 A I don't know.

09 Q If it had been in park and they did not
10 have a key at that time and they had to tow it
11 back to the police yard or wherever the police
12 take those vehicles, someone would have had to
13 force it at that time from park to neutral,
14 wouldn't they?

15 A Not if they towed it from the rear or
16 put it up on a flatbed.

17 Q If they had decided to tow it from
18 the -- if it had been towed from the front at
19 that time, it would have been necessary to force
20 it from park to neutral; correct?

21 A Did they have the key at that time?

22 Q Assume for me they did not have a key.

23 A They probably didn't tow it from the
00112 {10:58:07am}

01 front. They would know better than that.

02 Q If it were in the yard and towed from
03 the front at some point, they would have had to
04 force it from park to neutral; correct?

05 A Either did that or they went up under
06 the car and undid the linkage from there.

07 Q So that may have been done as well by
08 the yard?

09 A It's possible.

10 Q Okay. Now, if the car were towed from
11 the parking lot of Country Inn Suites and the
12 shifter was moved into neutral, then it would
13 have been sensible to leave it in neutral if
14 they were going to continue to tow it; correct?

15 A Yes.

16 Q It's also true, isn't it, that when
17 you're towing a vehicle that it's possible that
18 you will leave skid marks depending on the
19 situation?

20 A Not if it's in neutral, no, it won't.

21 Q If it's not in neutral, it's possible
22 to leave skid marks; correct?

23 A Yes.

00113 {10:59:20am}

01 Q How many people do you know of who do
02 the same kind of thing you do?

03 A Just the guys that work with me.

04 Q I'm talking about other companies that
05 repossess vehicles.

06 A There are several.

07 Q Several of them?

08 A Yes.

09 Q Like how many in the area that covers
10 the same area you do?

11 A I know three or four.

12 Q Three or four. Do the police require
13 you to register your trucks with them?

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14 A No.
15 Q No. They're just like any other
16 equipment?
17 A Yes.
18 Q The photos that you were shown, do you
19 know when those were taken?
20 A No.
21 Q Do you know if they were taken at the
22 time that the car was located at the Country Inn
23 Suites or was it some years after that?
00114 {11:00:33am}
01 A I don't know.
02 Q I don't know if I ever asked you to
03 identify that, but Exhibit 8 is your Expert
04 Witness Declaration; right?
05 A Yes, sir.
06 MR. NEWMAN: That's all I have.
07 MR. BURGE: That's all.
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FURTHER DEPONENT SAITH NOT
00115 {00:00:00PM}

01 C E R T I F I C A T E

02
03 STATE OF ALABAMA)

04
05 COUNTY OF MONTGOMERY)
06

07
08 I hereby certify that the above and
09 foregoing deposition was taken down by me in
10 stenotype, and the questions and answers thereto
11 were transcribed by means of computer-aided
12 transcription, and that the foregoing represents
13 a true and accurate transcript of the testimony
14 given by said witness upon said hearing.

15 I further certify that I am neither of
16 counsel, nor kin to the parties to the action,
17 nor am I in anywise interested in the result of
18 said cause.
19

20
21 -----
21 STACEY L. JOHNSON, Certified
22 Shorthand Reporter and
22 Commissioner for the State of
23 Alabama at Large.
23